

VOLUME I
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

**THE ATLANTIC REFINING COMPANY,
PETITIONER,**

vs.

FEDERAL TRADE COMMISSION.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964**

No. 292

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FILED

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In the

United States Court of Appeals

For the Seventh Circuit

No. 13340

THE ATLANTIC REFINING COMPANY,
Petitioner,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

Petition to Review and Set
Aside Order of the Fed-
eral Trade Commission.

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Judgment	3298	3299
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Clerk's certificate (omitted in printing)	3301	3301
Order allowing certiorari	3302	3301

APPENDIX.

SUMMARY OF PROCEEDINGS BELOW.

1956

Jan. 11—Original complaint issued against The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

Apr. 16—Answers filed by The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

Apr. 30—Motion filed by counsel supporting the complaint to amend the complaint by making The Goodyear Tire & Rubber Company, Inc.* an additional party respondent.

May 22—Order Amending Complaint filed by the Hearing Examiner.

July 6—Answers to the complaint as amended filed by Respondents.

Sept. 17—Pretrial conference in Washington, D. C. before Hearing Examiner Kolb.

Sept. 26—Counsel supporting the complaint filed motions to the Hearing Examiner to certify the proceeding to the Commission and to the Commission to affirm and modify the Hearing Examiner's Order Amending Complaint.

Oct. 8—Memorandum filed by Goodyear in opposition to motions of Sept. 26.

Oct. 11—Order filed by Hearing Examiner granting Sept. 26 motion of counsel supporting the complaint for certification of the proceeding to the Commission.

Oct. 26—The Commission issued its Order Affirming Hearing Examiner's Order Amending Complaint.

* The Goodyear Tire & Rubber Company, Inc. was a wholly-owned subsidiary of The Goodyear Tire & Rubber Company which since 1956 has been merged into its parent company. Both companies are hereinafter referred to collectively as "Goodyear," and The Atlantic Refining Company is hereinafter referred to as "Atlantic."

Summary of Proceedings Below.

Oct. 29-30—Pretrial conference held in Washington, D. C. before Hearing Examiner Kolb.

Oct. 30—Initial hearing held in Washington, D. C. before Hearing Examiner Kolb.

Nov. 9—Interlocutory Appeal Brief filed by counsel supporting the complaint appealing a ruling made by the Hearing Examiner at initial hearing on October 30, 1956 rejecting certain evidence.

Nov. 26—Answer to Interlocutory Appeal filed by Atlantic.

Nov. 26—Answering brief in opposition to Interlocutory Appeal filed by Goodyear.

Dec. 5—The Commission Order Sustaining Interlocutory Appeal issued.

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Mar. 7 to Dec. 12*—Hearings for presentation of evidence by counsel supporting the complaint held before Hearing Examiner Kolb.

Dec. 2—Motion filed by Goodyear to withdraw issues and to strike evidence with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

Dec. 12—Answer in opposition to Goodyear motion of December 2 filed by counsel supporting the complaint.

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Jan. 2—Hearing Examiner's order denying motion of Goodyear to withdraw issues and to strike evidence filed.

Jan. 14—Order of the Hearing Examiner Closing the Case for the Taking of Testimony in Support of the Complaint, and Fixing Time Within Which to File Motions, filed.

Jan. 31—Interlocutory Appeal to the Hearing Examiner's Order of January 2, filed by Goodyear.

Feb. 12—Answer in Opposition to January 31 Interlocutory Appeal of Goodyear filed by counsel supporting the complaint.

* Hearings were conducted in Washington, D. C., Philadelphia, Pa., Wilmington, Del. and Baltimore, Md. on the following dates within this period: Mar. 7, June 13, 14, 24, 25, 26, 27, 28, July 1, 2, 3, Nov. 18, 19, 20, 21, 26, 27 and Dec. 12.

Feb. 17—Motion to strike evidence filed by Goodyear.

Feb. 19—Motion filed by Atlantic to Strike Evidence Received Subject to Atlantic's Motion to Strike or Over Atlantic's Objection.

Feb. 19—Motion filed by Atlantic with respect to Firestone issues.

Mar. 3—Counsel supporting the complaint filed answer in opposition to Atlantic's motion of February 19, 1958.

Mar. 7—Counsel supporting the complaint filed an answer in opposition to Atlantic's motion of February 19, 1958.

Mar. 7—Counsel supporting the complaint filed an answer in opposition to Goodyear's motion of February 17, 1958.

Mar. 21—The Commission issued Order Denying Interlocutory Appeal filed by Goodyear January 31.

Mar. 24—The Hearing Examiner filed an order denying Atlantic's motion filed February 19 relating to Firestone issues.

Mar. 24—The Hearing Examiner filed an order disposing of Atlantic's motion of February 19.

Mar. 24—The Hearing Examiner issued an order denying in part and granting in part Goodyear's motion of February 17.

June 30 to Nov. 19*—Defense hearings held before Hearing Examiner Kolb.

1959

Apr. 1—Proposed Findings of Fact, Conclusion of Law and Order filed by counsel supporting the complaint.

June 15—Proposed Findings of Fact and Conclusions filed by Goodyear.

June 15—Proposed Findings of Fact and Conclusions and Brief in support thereof filed by Atlantic.

June 31—Reply Brief filed by counsel supporting the complaint.

* Hearings were conducted in Baltimore, Md., Washington, D. C. and Philadelphia, Pa. on the following dates within this period: June 30, July 1, 2, 3, 8, 9, 11 and Nov. 5, 6, 7, 17, 18, 19. On the final day counsel supporting the complaint called one rebuttal witness and Respondent Atlantic one surrebuttal witness. Respondent Goodyear called no witnesses.

Summary of Proceedings Below.

Oct. 21—Hearing Examiner entered Order closing all proceedings before the Hearing Examiner.

Oct. 23—The Hearing Examiner's Initial Decision filed.

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Apr. 22—Appeal Brief of counsel supporting the complaint filed.

Apr. 22—Appeal Brief of Atlantic filed.

May 25—Answering Brief of counsel supporting the complaint filed.

May 25—Answering Brief of Goodyear filed.

May 25—Answering Brief of Atlantic filed.

June 23—Oral argument before the Federal Trade Commission.*

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Mar. 9—Federal Trade Commission's Opinion and Order filed.

Apr. 21—Motion to Suspend Effective Date of Final Order filed by Goodyear.

Apr. 21—Motion to Postpone Effective Date of Commission's Final Order filed by Atlantic.

Apr. 28—Counsel supporting the complaint filed Answer to Separate Motions of Respondents to Stay Effective Date of Order to Cease and Desist Herein.

May 26—Federal Trade Commission issued order denying motions by Goodyear and Atlantic to suspend the effective date of the Final Order.

July 24—Motion of Respondents and Counsel for the Commission for Order to Correct Transcript of Hearings filed.

July 26—Federal Trade Commission issued Order Granting Motion to Correct Transcript.

* Commissioners: Earl W. Kintner, Chairman, Robert T. Secrest, Sigurd Anderson and William C. Kern. Commissioner Tait did not sit.

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UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

In the Matter of

The Goodyear Tire & Rubber Company,
The Goodyear Tire & Rubber Com-
pany, Inc., and The Atlantic Refining
Company, corporations.

} Docket No. 6486

AMENDED COMPLAINT.

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc. and The Atlantic Refining Company, hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges as follows:

Paragraph One: Respondent, The Goodyear Tire & Rubber Company, (hereinafter sometimes referred to as "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear operates its business directly and through several wholly owned or controlled subsidiaries, including The Goodyear Tire & Rubber Company, Inc., which is primarily a marketing subsidiary.

Respondent, The Goodyear Tire & Rubber Company, Inc.,

(hereinafter sometimes referred to as "Goodyear, Inc."), is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear, Inc. is a wholly owned subsidiary of Goodyear, engaging, among other things, in the sale of the latter's products. The principal officers of Goodyear and Goodyear, Inc. are the same and the two companies share the same principal office and place of business. Goodyear, Inc. is operated under the control and direction of Goodyear and is used as an instrument by the latter primarily for marketing purposes. All of the acts of Goodyear, Inc. referred to in this complaint were for and in the behalf of Goodyear.

38 Respondent, The Atlantic Refining Company, (hereinafter sometimes referred to as "Atlantic"), is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 260 South Broad Street, Philadelphia, Pennsylvania.

Paragraph Two: Goodyear is the largest manufacturer of rubber products in the United States, manufacturing a variety of rubber and associated products, including tires and inner tubes. The total net sales of Goodyear made directly and through its subsidiaries were more than one billion dollars in 1954.

Goodyear, Inc. sells various products manufactured by Goodyear, including tires and inner tubes. It also purchases for resale and distribution batteries, automotive parts and accessories and other items referred to as Car and Home Merchandise. Said products are sold directly to the consuming public through approximately 500 company owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various States of the United States.

Certain of said products, namely, tires, inner tubes, batteries, automotive parts and accessories, and certain Car and Home Merchandise items, are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this complaint.

Paragraph Three: Atlantic is a large producer and distributor of petroleum products. Directly or through its wholly owned or controlled subsidiaries, Atlantic is engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum wholesalers (hereinafter referred to as "distributors") and service stations. In 1954 its sales and operating revenue totaled more than one-half billion dollars. Atlantic also acts as an agent in promoting the sale of the TBA products of certain companies, including those of respondent Goodyear, Inc., in the manner hereinafter described.

Paragraph Four: In the course and conduct of their said businesses respondents are now and for many years have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they ship said products, including said TBA products, or cause them to be shipped, from the States in which said products are manufactured or warehoused to purchasers thereof located in other States of the United States and the District of Columbia.

Paragraph Five: In the course and conduct of their said business of promoting and selling TBA products in commerce, respondents are now and for many years have been engaged in competition with other corporations, partnerships, individuals and firms.

39 Paragraph Six: Goodyear, Inc. sells said TBA products directly and through wholesalers to many classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products.

Atlantic sells its petroleum products, directly and through distributors, to more than 10,000 service stations. In addition to petroleum products, a substantial number of these stations sell TBA products.

Paragraph Seven: In connection with the sale of TBA products in commerce, Goodyear, Inc. has entered into a contract with Atlantic under which Atlantic agrees to promote the sale of said TBA products to the service stations and distributors selling Atlantic's petroleum products in part of its sales territory. Atlantic has also entered into a substantially similar agreement with the Firestone Tire & Rubber Company (hereinafter referred to as Firestone) as to the stations and distributors selling its petroleum products in the remainder of its sales territory.

Under said contract Goodyear, Inc. pays Atlantic an "override" commission, ranging from 7½% to 10% on the net sales of TBA products to service stations and distributors selling Atlantic's petroleum products, in return for the influence and aid given by Atlantic in promoting said sales. Atlantic has a large number of service stations and distributors affiliated with it which sell only its petroleum products and, pursuant to its agreements with Goodyear, Inc. and Firestone, in various ways, urges, recommends and persuades the operators of these outlets to purchase the TBA products of Goodyear, Inc. and Firestone. Said stations and distributors at no time authorized or re-

requested Atlantic to find for them, or commit them to, a source of supply for TBA products. Said stations and distributors do not receive any part of the override commission.

Said service stations and distributors are operated ostensibly as independently owned business enterprises. However, their relationship with Atlantic is such that they are subject to its control. Such control is inherent in the power Atlantic has by virtue of the various types of contracts of employment, leases, purchase contracts, credit card contracts, franchises and other agreements between it and said service stations and distributors with respect to petroleum products and the occupancy, operation, use and tenure of the stations, other premises, facilities and equipment. Said agreements are for short terms and may be terminated or cancelled by Atlantic without reason at the end of the

term or prior thereto for non-performance of certain
40 provisions. Some of said provisions are so broad and general as to be susceptible of arbitrary interpretation and thus afford a basis for termination of the agreement by Atlantic.

Thus, the economic welfare of said service stations and distributors is largely dependent upon Atlantic. If Atlantic chooses, for whatever reason or no reason, to terminate said franchise or other agreements, the operator of the service station or distributor either loses his business entirely or must change to a different brand of petroleum products or change location or both, depending upon the type of lease arrangement involved. Such termination would result in great financial loss and irreparable injury to the operator, such as loss of his business, customer goodwill, sales, profits, and cost of relocation.

By virtue of these circumstances, Atlantic can greatly influence and control the purchasing and marketing activities of said service stations and distributors. Such

influence and control has been and is being exercised by Atlantic over its affiliated service stations and distributors by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodyear, Inc. and Firestone, the sellers designated by it.

Paragraph Eight: By virtue of said override commission agreement which Atlantic has entered into with Goodyear, Inc., the latter has sold substantial quantities of TBA products in commerce to said service stations and distributors. Goodyear, Inc. has been increasingly successful in selling TBA products to said service station and distributor market controlled by Atlantic. For example, Goodyear, Inc. made such sales, under said agreement, amounting to \$2,445,808 in 1951 and \$4,175,890 in 1952, on which it paid Atlantic commissions of \$239,250 and \$411,743, respectively, for those years.

Also, under the agreement between Atlantic and Firestone, as described hereinbefore, the latter has sold substantial quantities of TBA products to said service stations and distributors. Firestone made such sales amounting to \$3,809,843 in its fiscal year 1952 and \$4,796,304 in its fiscal year 1953, on which it paid Atlantic commissions of \$354,354 and \$446,286, respectively, for those years.

Paragraph Nine: In addition, Goodyear, Inc. has entered into the same or a substantially similar override agreement with other oil companies, including the Shell Oil Company. Said oil companies exercise control over the service stations and distributors which purchase their petroleum products in the same manner and for the same reasons as hereinabove alleged as to Atlantic. By virtue of said agreements, Goodyear, Inc. has been and is
41 increasingly successful in selling TBA products to the service station and distributor market controlled by said oil companies. For example, under such an agreement, Goodyear, Inc. made sales amounting to \$11,857,287 in 1951,

and \$16,595,761 in 1952, on which it paid the Shell Oil Company commissions of \$1,091,385 and \$1,523,122, respectively, for those years.

Paragraph Ten: Many competitors of Goodyear, Inc. and Firestone are unable to sell their TBA products to a substantial number of said distributors and service stations because of said override agreements. Many of these competitors do not pay override commissions to any oil company.

Paragraph Eleven: Among the effects of the adoption and use by respondents of said override commission agreements, and each of them, under the circumstances and in the manner hereinabove alleged are that they have:

1. Foreclosed a large and substantial amount of business to manufacturers, distributors, wholesalers and other vendors who compete with Goodyear, Inc. and Firestone in the sale of TBA products.
2. Injured, lessened, prevented and destroyed competition between Goodyear, Inc. and Firestone and between each of them and other manufacturers, distributors, wholesalers and other vendors of TBA products in the sale of said products.
3. Increased substantially the amount of TBA products business done by Goodyear, Inc. and Firestone.
4. Deprived a substantial number of petroleum distributors and service station operators of their right to act as independent businessmen by denying them freedom of choice as to the TBA products which they may purchase and stock for resale.
5. Deprived the consuming public of equal access to the TBA products of competitors of Goodyear, Inc. and Firestone and other advantages which would result from the natural and unobstructed flow of commerce in said products under conditions of free competition.

42 Paragraph Twelve: Said agreements between respondents and said agreements between a respondent and others not parties herein, and the acts and practices of respondents thereunder, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

43 Enclosure B—List of Specific Changes Made by
Amended Complaint.

1. The name of respondent The Goodyear Tire & Rubber Company, Inc. is added to the caption of the complaint and is also added in the fourth line of the first unnumbered paragraph of the complaint.

2. A paragraph describing respondent The Goodyear Tire & Rubber Company, Inc. has been added as subparagraph 2 of Paragraph One of the complaint.

3. Paragraph Two of the complaint has been rewritten as now appears in the amended complaint.

4. In Paragraphs Three, Six, Seven, Eight, Nine, Ten and Eleven, wherever the name Goodyear appeared in the original complaint the name Goodyear, Inc. has been substituted in the amended complaint.

5. In Paragraph Seven of the amended complaint the first sentence has been changed to read as follows:

"In connection with the sale of TBA products in commerce, Goodyear, Inc. has entered into a contract with Atlantic under which Atlantic agrees to promote the sale of said TBA products to the service stations and distributors selling Atlantic's petroleum products in part of its sales territory."

71

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

ANSWER OF THE ATLANTIC REFINING COMPANY
TO COMPLAINT AS AMENDED BY ORDER OF
MAY 21, 1956.

Atlantic Refining Company (hereinafter referred to as "Atlantic") reserving to itself all, and all manner of, objections to the uncertainties and insufficiencies of the Complaint of the Federal Trade Commission as amended by the Order dated May 21, 1956 of Earl J. Kolb, Hearing Examiner, makes answer thereto as follows:

The Complaint as thus amended is defective upon its face for the reason that it does not state that the Federal Trade Commission has reason to believe that The Goodyear Tire & Rubber Company, Inc., a party respondent in the proceeding, has violated the provisions of Section 5 of the Federal Trade Commission Act and does not state
72 that it appears to the Commission that a proceeding against said respondent would be in the public interest.

Atlantic makes further answer to the numbered paragraphs of the Complaint as follows:

Paragraph One: Atlantic was incorporated in 1870 under the laws of the State of Pennsylvania, and has engaged in business continuously since that date. Its princi-

14 *Answer of Atlantic to Complaint as Amended.*

pal office and place of business is located at 260 South Broad Street in Philadelphia, Pennsylvania.

Atlantic is without knowledge of the corporate structure, location, officers, business or activities of respondent The Goodyear Tire & Rubber Company (referred to in the amended Complaint and hereinafter as "Goodyear") and its various subsidiaries, except as hereinafter noted. The Goodyear Tire & Rubber Company, Inc. (referred to in the amended Complaint and hereinafter as "Goodyear, Inc.") is the only corporation of the Goodyear group with which Atlantic has business relations. Its principal office and place of business is located at 1144 East Market Street, Akron, Ohio.

73 Paragraph Two: Atlantic is without knowledge of the business or activities of Goodyear. Goodyear, Inc. is engaged in the business of selling TBA products generally as described in Paragraph Two of the amended Complaint. Certain products, such as tires, inner tubes, batteries, automotive parts and accessories, are properly described as "TBA" products.

Paragraph Three: Atlantic has refined and sold superior quality petroleum products longer than any other major refiner on the East Coast and placed in operation the first modern type automotive service station facility in this country. Hence, Atlantic has been engaged in competition during almost the entire life span of the oil industry.

Directly or through wholly owned subsidiaries Atlantic now engages in substantially all branches of the petroleum industry. It purchases about half of its refinery crude oil requirements, and a great majority of the locations where Atlantic gasoline, motor oil and automotive lubricants are sold to the motorist consumer are owned by, or leased from owners other than Atlantic to dealers who operate service stations at such locations. Atlantic's annual sales of

74 such petroleum products to distributors and service station dealers constitute a small percentage of the market.

Atlantic denies that the Complaint fairly describes the manner in which it renders TBA sales assistance.

Paragraph Four: Atlantic admits that Goodyear, Inc. is engaged in commerce in TBA products. The averments as to Atlantic are denied except as hereinafter stated.

Atlantic markets petroleum products, including various grades of heating oils, waxes, liquid propane, industrial lubricants, asphalts, solvents, and a wide variety of other petroleum and petrochemical products. It is not a manufacturer of TBA, and since 1952 it has not been a wholesale distributor of TBA.

Service station dealers selling certain Atlantic petroleum products, such as gasoline, motor oil and automotive lubricants, are situated in a 17-State marketing area comprising the Eastern Seaboard States from New Hampshire to Florida and portions of Ohio and West Virginia. Atlantic makes no sales in the District of Columbia to distributors or service station dealers, and does not operate any wholesale facilities or service station in the District.

75 With the exception noted below, Atlantic admits that petroleum products sold by it are shipped from the States in which such products are manufactured, refined, stored or warehoused to terminals, bulk plants, or bulk storage located in other States for the purpose of sale and distribution to resellers and consumers in such other States, but denies that such course of conduct confers any jurisdiction in the Federal Trade Commission, insofar as Atlantic is concerned, with respect to the matters here in controversy.

Substantially all gasoline, motor oil and automotive lubricants sold by Atlantic to petroleum wholesalers and petroleum retailers located and doing business in Penn.

16 *Answer of Atlantic to Complaint as Amended.*

sylvania are manufactured, refined, shipped and sold within the State of Pennsylvania, and are not manufactured, refined nor warehoused outside such State nor shipped into it from outside its borders.

Paragraph Five: Admitted that Goodyear, Inc. is in competition with others in selling TBA products and that Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

76 Atlantic has never been a manufacturer of TBA.

For many years prior to 1952 Atlantic was a purchaser-reseller of TBA, and during such time was engaged in competition with other corporations, partnerships, individuals and firms who also sold TBA. Atlantic's TBA activities since 1952 have been devoted to assisting Goodyear, Inc. and others to sell TBA.

Paragraph Six: Denied as averred. Atlantic sells certain of its petroleum products to petroleum distributors and to several thousand service station dealers, the more progressive and competitive of which purchase TBA products from others for resale to the motoring public.

Service stations are convenient, logical, and necessary points for satisfying the TBA needs of motorists. For this reason, the modern service station has become a large and important market for TBA products, and the retail sale of such products has become an integral, essential part of the modern retail service station business. Dealers who operate modern service stations have found that a competitively priced, readily available, nationally advertised superior quality TBA line increases their petroleum products and related services business, supplements

77 their income from the sale of petroleum products, and is essential to the successful, competitive conduct of their retail service station business.

In order for Atlantic to survive in the intensely competitive business of selling gasoline, motor oil, and automotive

lubricants it must utilize a system of distribution based on modern retail service stations operated by competent dealers. Atlantic cannot compete effectively with other oil companies unless dealers purchasing Atlantic's petroleum products are competitive at the retail level, and many of such dealers cannot compete successfully unless the TBA component of their retail business is competitive with the TBA selling activity of their retail competitors.

Many other economic realities explain and justify Atlantic's interest in the purchase and resale of superior quality TBA by distributors and dealers who handle principally Atlantic petroleum products.

Paragraph Seven: Atlantic has entered into contracts with Goodyear, Inc. providing for the rendering of certain services by Atlantic in connection with the sale of Goodyear TBA. Atlantic has also entered into contracts 78 of a generally similar nature with The Firestone Tire and Rubber Company, which is not a respondent in this proceeding. As to the terms of such contracts, reference is made to the contracts themselves. Atlantic denies that the Complaint fairly paraphrases, summarizes, or states the terms and effects of such contracts, and also denies the further allegations of Paragraph Seven except as hereinafter expressly stated.

Sales commissions paid by Goodyear, Inc. to Atlantic are compensation for services rendered by Atlantic. Atlantic admits that petroleum distributors and service station dealers purchasing Atlantic petroleum products receive no part of Atlantic's TBA sales commissions. The prices they pay for Goodyear TBA are necessarily competitive with prices paid by other dealers and distributors. Atlantic began withdrawing from the position of a TBA purchaser-reseller on an experimental basis during 1950 and by the latter part of 1951 had ceased to be a wholesale distributor of TBA. The economically

essential wholesaler distributive function formerly performed by Atlantic is now carried out by a substantial number of separate corporation, partnerships, individuals and firms whose competitive opportunities were significantly enhanced or were created by Atlantic's withdrawal as a wholesale distributor of TBA.

Atlantic, since 1952, has neither manufactured nor purchased and sold TBA for resale. Atlantic has committed no one to the purchase or sale of Goodyear TBA.

Insofar as the motoring public in Atlantic's marketing area is concerned, oil companies compete with each other principally through the distributive medium of petroleum distributors and retail dealers. As to Atlantic this fundamental economic fact means that its competitive survival depends on two broad standards of business performance, namely:

(1) The economic necessity for Atlantic to support its distributor and dealer customers by being competitive with other oil companies as to all the essential components of the business, beginning with product quality and price and extending through the range of other factors to the competent rendering of expert economic advice and the furnishing of business-building counsel, which all customers can accept or reject, in whole or in part; and

(2) The economic necessity for Atlantic's reseller customers to be competitive with their competition as to all the essential components of the business, beginning with product quality and price and extending through the range of other factors to the competent rendering of those services which the motoring public demands in return for its patronage.

Atlantic, having reached the conclusion that it would prefer not to engage as a direct participant in the TBA business, either as manufacturer or a wholesale distributor, found that the only economically feasible alternative

compatible with the competitive necessities of the market place was and is the endorsement, sponsorship, and active support of one or more other efficient, reliable sources of supply—i. e the Sales Commission Plan, an ordinary business method openly adopted and extensively employed in the industry over a period of many years.

The concept of commercial "control",—i.e., control of resellers' buying practices, and the opposing concept of salesmanship,—i. e., urge, recommend and endeavor to persuade, are contradictory concepts. Atlantic denies the "control" alleged in the Complaint.

Atlantic admits that it recommends, urges and endeavors to persuade petroleum products reseller customers 81 to purchase some Goodyear TBA. Many of Atlantic's customers purchase little or no TBA from recommended Goodyear, Inc., TBA supply points. Large quantities of TBA sold to and by such petroleum reseller customers of Atlantic are not TBA products manufactured, distributed, or sold by Goodyear, Inc. or by The Firestone Tire & Rubber Company.

Atlantic has no "contracts of employment" with its gasoline reseller customers.

Atlantic admits that its "credit card contracts" are subject to a 48-hour cancellation right. Neither the existence nor exercise of such cancellation right has resulted in control of its customers' buying practices.

With respect to the remaining types of contracts alleged to exist between Atlantic and petroleum distributors and service station dealers, Atlantic cannot be certain of the intended meaning or relevance of the descriptive conclusion "short term" but asserts that if the word "short" is measured by any reasonable yardstick in the light of existing market conditions and legitimate business considerations, Atlantic has not entered into any "short term" contracts of the type alleged. Atlantic's con-

tracts are definite as to term, as required by law,
82 and Atlantic denies that the expiration of a designated term imposes upon it a legal duty to renew an expired agreement.

Atlantic denies that its contracts with distributors and service station dealers contain provisions so broad and general as to be susceptible of arbitrary interpretation by Atlantic or that Atlantic has so attempted to interpret any provisions of such contracts. The provisions of such contracts are lawful and reasonably definite.

Atlantic admits that some of its contracts contain certain provisions providing for cancellation in the event of non-performance, but denies that the enforcement of a lawful right based on non-performance can simultaneously constitute the breach of any legal duty to the party whose non-performance gives rise to the cancellation right.

Atlantic's policy with respect to petroleum distributors and service station dealers is that such potential TBA customers are free to accept or reject any TBA program suggested and recommended by Atlantic. This policy has been publicized and called to the attention of Atlantic's petroleum products reseller customers on many occasions,
83 both in writing and orally, since Atlantic's adoption of the Sales Commission Plan. Atlantic's Management has consistently and diligently pursued a course of action reasonably calculated to achieve the objective of adequately informing its field force as to the meaning and scope of such policy and to assure itself that the policy was and is faithfully translated into actual practice.

Service station dealer customers of Atlantic who purchase Goodyear TBA are in direct competition with adjacent or nearby service stations selling the same or other brands of TBA products.

Paragraph Eight: Atlantic denies that Goodyear, Inc. in 1951 and 1952 sold the quantities of TBA products

specified in the Complaint in commerce to distributors and service station dealers handling Atlantic petroleum products, and denies the averment that the service station and distributor TBA market was or is "controlled" by Atlantic. Atlantic admits that certain amounts of Goodyear TBA were sold to such petroleum distributors and service station dealers by recommended Goodyear, Inc. TBA supply points and that the total amount thus sold in 1952,
84 the first complete calendar year of full scale operation under the Sales Commission arrangement with Goodyear, Inc. was greater than the corresponding total amount sold in 1951.

Although The Firestone Tire & Rubber Company is not a respondent herein, the admissions, denials, and explanations set forth above are applicable to the allegations of the Complaint respecting or relating to the Firestone Tire & Rubber Company.

Paragraph Nine: Atlantic is without knowledge of the facts averred and demands proof thereof to the extent, if any, that such facts may be deemed relevant to the Complaint against Atlantic.

Paragraph Ten: Atlantic denies that competitors of Goodyear, Inc. and The Firestone Tire & Rubber Company are unable to sell their TBA products and merchandise to petroleum distributors and service station dealers because of any agreement entered into by Atlantic. Atlantic has no knowledge of the extent to which unnamed competitors of Goodyear, Inc. and The Firestone Tire & Rubber Company have elected to pay sales commissions to other oil companies.

85 Paragraph Eleven: Atlantic denies each allegation of Paragraph Eleven of the Complaint.

Paragraph Twelve: Atlantic denies each and every averment of paragraph twelve of the Complaint. Atlantic entered into the above referred to Agreements with Good-

year, Inc. and The Firestone Tire & Rubber Company for the main and lawful purpose of increasing competition at all levels of distribution in the TBA and petroleum products business. Atlantic's acts and practices pursuant to and under such Agreements have been consistent with and reasonably related to the accomplishment of such purpose.

Wherefore, The Atlantic Refining Company respectfully prays that the Complaint be dismissed and that final judgment be entered for it.

Charles I. Thompson,
Attorney for Defendant, The
Atlantic Refining Company.

Of Counsel:

Ballard, Spahr, Andrews & Ingersoll,
1035 Land Title Building,
Philadelphia 10, Pennsylvania.

Dated:

51 BEFORE FEDERAL TRADE COMMISSION.
* * (Caption 6486) * *

ANSWER OF THE GOODYEAR TIRE & RUBBER
COMPANY TO THE COMPLAINT, AS AMENDED.

The Goodyear Tire & Rubber Company, by its attorneys,
for its answer to the complaint of the Federal Trade Com-
mission, as amended by the order amending the complaint
of the hearing examiner

I.

Answering generally the allegations of the complaint, as amended, alleges:

A. The sales commission plan, which is the subject of the complaint, as amended, is a practical, efficient and inexpensive method of distribution of essential TBA prod-

ucts to motorists through thousands of independent service stations throughout the United States.

52 B. Said sales commission plan is a legitimate and competitive method of marketing which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

C. Said sales commission plan is a part of intense and legitimate competition among suppliers of TBA products for the business of said service stations.

D. Said sales commission plan is not in violation of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) or any other statute.

E. The bringing and prosecution of the complaint and the complaint, as amended, is not in the public interest.

II.

Answering the specific allegations of the complaint, as amended, alleges:

1. As to paragraph 1 of the complaint, as amended, Denies each and every allegation of the first unnumbered paragraph, except admits that respondent, The Goodyear Tire & Rubber Company (herein called "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal
53 office and place of business located at 1144 East Market Street, Akron, Ohio and that Goodyear operates its business directly and does business with several subsidiaries and that The Goodyear Tire & Rubber Company, Inc. (herein called "Goodyear, Inc."), is a subsidiary which sells Goodyear's products.

Denies each and every allegation of the second unnumbered paragraph, except admits Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and

place of business located at 1144 East Market Street, Akron, Ohio; that Goodyear, Inc. is a wholly-owned subsidiary of Goodyear and sells products of Goodyear; that some of the principal officers of Goodyear are also officers of Goodyear, Inc. and that the two companies share the same principal office and place of business.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the third unnumbered paragraph, except as such facts are admitted by The Atlantic Refining Company (herein called "Atlantic"), in its answer to the complaint, as amended.

2. Admits the allegations of paragraph 2 of the complaint, as amended.

54 3. Denies each and every allegation of paragraph

3 of the complaint, as amended, except admits that Atlantic is a producer and distributor of petroleum products and admits that Atlantic renders sales assistance to certain companies, including Goodyear, Inc., in promoting the sale of TBA products and denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 as to the business operations of Atlantic, except as such allegations are admitted by Atlantic in its answer to the complaint, as amended.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the complaint, as amended, except admits so much of the allegations of paragraph 4 of the complaint, as amended, as to respondents Goodyear and Goodyear, Inc. as are allegations of fact and not legal conclusions.

5. Denies each and every allegation of paragraph 5 of the complaint, as amended, except admits that Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and that Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

6. As to paragraph 6 of the complaint, as amended.

55 Admits the allegations of the first unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the second unnumbered paragraph, except admits that a number of stations selling the petroleum products of Atlantic sell TBA products.

7. As to paragraph 7 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to TBA products as to the terms of which contract reference is made to the contract itself and admits that Atlantic has entered into a sales commission agreement with respect to TBA products with The Firestone Tire & Rubber Company as to the terms of which agreement reference is made to the agreement itself.

Denies each and every allegation of the second unnumbered paragraph, except admits that Goodyear, Inc. has a sales commission contract with Atlantic for TBA products as to the terms of which contract reference is made to the contract itself; admits that Goodyear, Inc. pays

56 Atlantic sales commissions pursuant to said contract

and admits that pursuant to said contract Atlantic renders sales assistance in connection with the sale by Goodyear, Inc. of TBA products covered by said contract; admits that the stations and distributors selling the petroleum products of Atlantic do not receive any part of any commission paid to Atlantic under said contract; and denies knowledge or information sufficient to form a belief as to the truth of the allegation that stations and distributors selling the petroleum products of Atlantic at no time authorized or requested Atlantic to find for them, or commit them to, a source of supply for TBA products.

Denies each and every allegation of the third unnumbered paragraph, except admits that the service stations and distributors selling the petroleum products of Atlantic are operated as independently-owned business enterprises and that Atlantic has various contractual arrangements with said service stations and distributors as to which arrangements reference is made to the contracts themselves.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth unnumbered paragraph.

57 Denies each and every allegation of the fifth unnumbered paragraph.

8. As to paragraph 8 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has sold TBA products to service stations and distributors selling petroleum products of Atlantic and has received valuable sales assistance from Atlantic in connection with such sales and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Atlantic and that Goodyear, Inc. has paid commissions to Atlantic pursuant to said contract in substantially the amounts stated in the last sentence of said unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the second unnumbered paragraph.

9. Denies each and every allegation of paragraph 9 of the complaint, as amended, except admits that Goodyear, Inc. has entered into sales commission agreements with oil companies other than Atlantic as to the terms of which agreements reference is made to the agreements themselves; admits that pursuant to such agreements said oil companies have rendered and render sales assistance to Goodyear, Inc.; admits that Goodyear, Inc. has

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made sales of TBA products to service stations selling petroleum products of such oil companies and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Shell Oil Company and that Goodyear, Inc. has paid commissions to the said oil company pursuant to said contract in the amounts stated in the last sentence of said paragraph 9 of the complaint, as amended.

10. Denies each and every allegation of paragraph 10 of the complaint, as amended, except admits that some suppliers of TBA products do not use a sales commission arrangement for the marketing of some or all TBA products.

11. Denies each and every allegation of paragraph 11 of the complaint, as amended.

12. Denies each and every allegation of paragraph 12 of the complaint, as amended.

III.

As further defenses to the complaint and order amending complaint of the Federal Trade Commission, respondent, Goodyear, alleges:

59 1. The complaint and order amending complaint do not comply with Section 5(b) of the Federal Trade Commission Act in that

(a) The complaint, as amended by the order amending complaint, was not premised upon a finding by the Federal Trade Commission that it had reason to believe that Goodyear has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce and by a finding that it appears to the Commission that a proceeding by it with respect to Goodyear would be in the interest of the public.

(b) The complaint, as amended by the order amend-

28 *Answer of Goodyear to Complaint as Amended.*

ing complaint, was not issued and served upon Goodyear by the Commission.

(c) The complaint, as amended by the order amending complaint, does not contain a notice of hearing upon a day and at a place therein fixed at least 30 days after the service of the complaint, as amended.

2. The complaint, as amended by the order amending complaint, does not comply with Rules 3.3 and 3.6
60 of the Rules of Practice of the Federal Trade Commission in that

(a) The complaint, as amended by the order amending complaint of the hearing examiner is not a complaint issued and served by the Federal Trade Commission.

(b) The complaint, as amended by the order amending complaint, does not provide notice of the time and place for hearing at least 45 days after service of the complaint, as amended.

Wherefore, respondent, The Goodyear Tire & Rubber Company, prays that the complaint, as amended by the order amending complaint of the hearing examiner be, dismissed.

Dated: July 6, 1956.

Cahill, Gordon, Reindel & Ohl,

By Mathias F. Correa,

63 Wall Street,

New York 5, New York,

*Attorneys for The Goodyear
Tire & Rubber Company.*

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UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—6486) • •

Commissioners:

John W. Gwynne, Chairman

Robert T. Secrest

Sigurd Anderson

William C. Kern

Edward T. Tait

ORDER SUSTAINING INTERLOCUTORY APPEAL.

This matter having been heard on an interlocutory appeal, filed by counsel in support of the complaint, from rulings of the hearing examiner excluding from the record certain evidence relating to the extent and effect of the commission agreement between the respondent, The Atlantic Refining Company (hereinafter referred to as Atlantic) and The Firestone Tire and Rubber Company (hereinafter referred to as Firestone), and other evidence relating to the existence, extent and operation of alleged commission agreements between the respondent, The Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as Goodyear, Inc.) and a number of oil companies other than Atlantic; and

It appearing that the basis for the rulings complained of was that evidence of the relationships between Atlantic and Firestone and between Goodyear, Inc., and oil companies other than Atlantic have no bearing on the issues in this proceeding, which proceeding is concerned only with the contractual relationship between Atlantic and Goodyear, Inc., and the acts and practices engaged in pursuant thereto; and

It further appearing, however, that the allegations of the complaint are not limited to the existence of and activities under the commission contract between respondents

Atlantic and Goodyear, Inc., but relate also to a general course of competitive action by each of said respondents, under which respondent Atlantic is charged with having unlawfully entered into and acted under contracts with both Goodyear, Inc., and Firestone providing for the receipt by it of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., and Firestone to service stations controlled by Atlantic, and respondent Goodyear, Inc., is alleged to have unlawfully entered into and acted under similar contracts with a number of oil companies, including Shell Oil Company and Atlantic, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., to service stations controlled by said oil companies; and

The Commission being of the opinion that the evidence rejected by the hearing examiner apparently was relevant and material to the direct issues thus raised by the complaint and that, if so, it should have been received in support of said issues:

It Is Ordered that the appeal of counsel in support of the complaint be, and it hereby is, sustained.

It Is Further Ordered that the hearing examiner be, and he hereby is, directed to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract between respondent Atlantic and Firestone and of the alleged similar commission contracts between respondent Goodyear, Inc., and each of a number of oil companies other than respondent Atlantic. Such evidence relating to the contract between Atlantic and Firestone should be admitted as against

respondent Atlantic unconditionally and as against respondent Goodyear, Inc., subject to a subsequent motion to strike upon a proper showing; and the evidence relating to the alleged contracts between Goodyear, Inc., and the oil companies other than Atlantic should be admitted as against respondent Goodyear, Inc., unconditionally and as against respondent Atlantic subject to the same type of motion.

By the Commission.

/s/ Robert M. Parrish,
Robert M. Parrish,

Secretary.

Issued: December 5, 1956.

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BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

**MOTION OF THE ATLANTIC REFINING COMPANY
WITH RESPECT TO FIRESTONE ISSUES AND
EVIDENCE AND OVERLAPPING EVIDENCE IN
THE FIRESTONE-SHELL PROCEEDINGS.**

To the Honorable Earl J. Kolb, Hearing Examiner:

Pursuant to Rule 3.8, The Atlantic Refining Company, by its attorneys, moves for an order granting the following relief:

(a) dismissing the Complaint insofar as it relates to the sales commission agreement between The Firestone Tire & Rubber Company and Atlantic;

(b) striking all evidence heretofore received in this proceeding with respect to the Firestone-Atlantic sales commission agreement and operations of Firestone and Atlantic thereunder, except evidence of the existence

of the agreement and the substantiality of sales thereunder; and

368 (c) nullifying the effect in this proceeding of overlapping and different evidence received by the Examiner in the Firestone-Shell proceeding (Docket 6487).

The grounds for this motion are:

1. Insofar as this proceeding relates to the Firestone-Atlantic sales commission agreement, Firestone is a necessary party because the legality of the agreement cannot be determined without consideration of the operations of both parties thereunder and because the rights and duties of neither party can be modified without injuriously affecting the rights of the other. Where a necessary party is not present, a valid order cannot be issued and the Complaint should be dismissed insofar as it involves the interests of that party.

2. The foregoing supports the Examiner's initial ruling rejecting all Firestone evidence except that pertaining to the existence of the agreement and the substantiality of sales thereunder. Atlantic believes that ruling to have been correct, despite the Commission's order sustaining an appeal therefrom, and files this motion to preserve its rights with respect thereto:

369 3. Due process and the Administrative Procedure Act require that the decision in this proceeding be based exclusively on the testimony and exhibits received in this proceeding subject to cross-examination by the parties herein. With due deference to the Examiner's previous rulings, it is submitted that the background of impression formed by him from the overlapping and different testimony and exhibits in the concurrent Firestone-Shell hearings must necessarily color his evaluation of the evidence on the same issues in this proceeding. Such over-

lapping and different testimony and exhibits in the Firestone-Shell case include:

(a) Some 21 Firestone documents, none of which were offered in evidence in the instant proceedings and most of which, if offered, would not have been admissible against Atlantic. This is in addition to the numerous documents which were received in both cases.

(b) The different testimony as to Atlantic's dealer operations in Baltimore and Wilmington by ex-Atlantic dealers Scheiner, Johnson, Sullivan and Galle. Scheiner and Johnson were also TBA suppliers to Atlantic service stations and testified differently in the two proceedings as to this aspect of their operations.

370 (c) The different testimony as to the effect of Atlantic's TBA program by Savage and Lang in Baltimore and by Lingenfelser, Hinderscheid and Connell in Philadelphia, and the testimony of Heideman in Philadelphia which was not offered in the instant case. The last named witness gave explanations of certain documents at variance with the explanations of the same documents of record in the instant case.

(d) The testimony of Atlantic employee McIntire on voir dire and direct and cross-examination in the Firestone-Shell case regarding a survey which was rejected by the Examiner in Firestone-Shell but received into evidence against Atlantic in Goodyear-Atlantic.

4. What steps may be appropriate to nullify in this case the effect of the overlapping and different testimony in the Firestone-Shell case depends in large measure on the disposition of Atlantic's foregoing motion to dismiss the Complaint insofar as it relates to the Firestone-Atlantic agreement and the foregoing motion to strike evidence relating thereto. The appropriate relief will also depend upon the testimony and exhibits that may be offered by respondents

in the two cases and upon the issues which are ultimately held to be determinative of the decision in this case. 371 At the least, Atlantic submits that under the Constitution and the Administrative Procedure Act the Examiner should withdraw from consideration in this case issues as to which there is different evidence in the Firestone-Shell hearings.

Respectfully submitted,

/s/ Charles I. Thompson,
Charles I. Thompson,

/s/ Frederic L. Ballard, Jr.,
Frederic L. Ballard, Jr.,

/s/ Roy N. Freed,
Roy N. Freed,

*Attorneys for The Atlantic
Refining Company.*

Of Counsel:

Ballard, Spahr, Andrews & Ingersoll.

Dated: February 17, 1958.

ANSWER IN OPPOSITION TO MOTION OF RESPONDENT THE ATLANTIC REFINING COMPANY WITH RESPECT TO FIRESTONE ISSUES AND EVIDENCE AND OVERLAPPING EVIDENCE IN THE FIRESTONE-SHELL PROCEEDINGS.

Come now counsel in support of the complaint and in opposition to the Motion of The Atlantic Refining Company With Respect to Firestone Issues and Evidence and Overlapping Evidence In The Firestone-Shell Proceedings urge

that said Motion be denied for the reasons hereinafter set forth.

Respondent Atlantic specifically moves to dismiss the complaint herein insofar as it relates to the Firestone-Atlantic agreement and to strike evidence relating thereto.

The reason why said Motion should be denied is that the Commission, in its Order Sustaining Interlocutory Appeal, dated December 5, 1956, specifically directed the Hearing Examiner "to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operations and competitive effects of the override commission contract between respondent Atlantic and Firestone * * *".

Although the Commission's prior ruling is dispositive of the instant Motion, it should also be noted that respondent Atlantic is receiving a full and fair hearing under 375 the Administrative Procedure Act so that, on the merits, said Motion should be denied.

The contentions of respondent Atlantic herein are basically the same as those advanced by respondent Goodyear in its Motion to withdraw issues and strike evidence relating to the Goodyear-Shell Oil Company agreement, previously denied by the Hearing Examiner and now on Interlocutory Appeal before the Commission. The Answers in opposition thereto, filed December 12, 1957 and February 12, 1958, are equally applicable to the present Motion, and reference is made thereto for detailed reasons why the present Motion also should be denied.

Respectfully submitted,

James S. Kelaher,

Peter J. Dias,

Counsel Supporting the Complaint.

March 3, 1958.

**ORDER DENYING MOTION OF THE ATLANTIC
REFINING COMPANY TO DISMISS PORTION OF
THE COMPLAINT AND TO STRIKE CERTAIN
EVIDENCE RECEIVED.**

This matter is before the hearing examiner upon motion of respondent The Atlantic Refining Company to dismiss the complaint insofar as it relates to the sales commission agreement between The Firestone Tire & Rubber Company and The Atlantic Refining Company, and to strike all evidence heretofore received with respect to the Firestone-Atlantic sales commission agreement and operations of Firestone and Atlantic thereunder, and answer thereto filed by counsel supporting the complaint.

1. On October 30, 1956, the hearing examiner rejected and refused to receive evidence as to agreements between The Firestone Tire & Rubber Company and The Atlantic Refining Company and agreements between The Goodyear Tire & Rubber Company and oil companies other than Atlantic.

2. An interlocutory appeal from this ruling was taken to the Commission and on December 5, 1956, the Commission issued its order overruling the hearing examiner and directing the hearing examiner as follows:

“It Is Further Ordered that the hearing examiner be, and he hereby is, directed to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract between respondent Atlantic and Firestone and of the alleged similar commission contracts between respondent Goodyear, Inc., and each

of a number of oil companies other than respondent Atlantic. Such evidence relating to the contract between Atlantic and Firestone should be admitted as against respondent Atlantic unconditionally and as against respondent Goodyear, Inc., subject to a subsequent motion to strike upon a proper showing; and the evidence relating to the alleged contracts between Goodyear, Inc., and the oil companies other than Atlantic should be admitted as against respondent Goodyear, Inc., unconditionally and as against respondent Atlantic subject to the same type of motion."

3. The hearing examiner is of the opinion that he is bound by the above order of the Commission and that said order is controlling as to the matters raised in this motion.

It Is Therefore Ordered that the motion of respondent The Atlantic Refining Company to dismiss the complaint insofar as it relates to the sales commission agreement between The Firestone Tire & Rubber Company and The Atlantic Refining Company and to strike evidence with respect to the Firestone-Atlantic sales commission agreement and the operation thereunder be, and the same is hereby, denied.

Earl J. Kolb,
Hearing Examiner.

March 21, 1958.

**ORDER DISPOSING OF MOTION OF THE ATLANTIC
REFINING COMPANY TO STRIKE EVIDENCE
RECEIVED SUBJECT TO MOTION TO STRIKE OR
OVER ATLANTIC'S OBJECTION.**

This proceeding is before the hearing examiner on motion of respondent, The Atlantic Refining Company, to strike evidence received subject to Atlantic's motion to strike or over Atlantic's objection, and answer thereto filed by counsel supporting the complaint.

1. The specifications contained in the motion to strike may be divided into the following categories:

- A. Testimony and other evidence, including exhibits and stipulated facts pertaining to oil companies other than The Atlantic Refining Company.
- B. Exhibits which are primarily internal documents of The Goodyear Tire & Rubber Company which were received in evidence either over the objection of The Atlantic Refining Company or subject to motion to strike by Atlantic.
- C. Evidence admitted over objection of The Atlantic Refining Company.

412 2. The testimony and exhibits, including stipulated facts relative to TBA transactions, relating to oil companies other than The Atlantic Refining Company were received in evidence subject to motion to strike by respondent. The Atlantic Refining Company in compliance with a previous order of the Commission relative to such evidence. After reviewing the record, the hearing examiner is of the opinion that no connection has been established between The Atlantic Refining Company and The

Goodyear Tire & Rubber Company contracts with other oil companies and that the testimony and exhibits introduced with reference to the other oil companies should be stricken as to The Atlantic Refining Company.

3. With reference to exhibits which are inter-office documents of The Goodyear Tire & Rubber Company, it appears from the record that the contractual relationship between The Atlantic Refining Company and The Goodyear Tire & Rubber Company has been established by other competent evidence in this proceeding, that there also is in evidence contracts, or forms of contracts, between The Atlantic Refining Company and its various stations. The exhibits received, subject to motion to strike, might not be competent to show the existence of the contractual relationship between the two respondents, but this contractual relationship having been established, these exhibits are competent to show the steps taken to implement and carry out the contracts. It is, accordingly, the opinion of the hearing examiner that the documents are competent, relevant and material, and that the motion to strike by The Atlantic Refining Company should be denied and the documents received in evidence in this proceeding, except Commission's Exhibit 32 which is a document pertaining to a transaction between The Goodyear Tire & Rubber Company and Auto-Lite Company, to which motion to strike should be sustained and the document stricken as to The Atlantic Refining Company.

4. The evidence admitted over objections of respondent, The Atlantic Refining Company, pertaining to the state of mind of the dealers has been reviewed by the hearing examiner, and it appears that the objections were fully argued and considered at the time it was offered and the hearing examiner sees no reason for disturbing his rulings on evidence heretofore made during the course of this trial and while the witness was on the stand.

413 It Is Therefore Ordered that the motion of the respondent The Atlantic Refining Company to strike testimony pertaining to oil companies other than The Atlantic Refining Company be sustained and said testimony is hereby stricken as to The Atlantic Refining Company, but remains in the record as to respondent The Goodyear Tire & Rubber Company.

It Is Further Ordered that motion of respondent The Atlantic Refining Company to strike certain exhibits or such portions thereof pertaining to oil companies other than The Atlantic Refining Company be sustained, and that said exhibits, or such portions thereof, insofar as they pertain to oil companies other than The Atlantic Refining Company be stricken as to The Atlantic Refining Company, but remain in the record as to respondent The Goodyear Tire & Rubber Company.

It Is Further Ordered that motion of respondent The Atlantic Refining Company to strike certain stipulated facts pertaining to oil companies other than The Atlantic Refining Company be sustained, and that said stipulated facts insofar as they pertain to oil companies other than The Atlantic Refining Company be stricken as to The Atlantic Refining Company but remain in the record as to respondent The Goodyear Tire & Rubber Company.

It Is Further Ordered that the motion of respondent The Atlantic Refining Company to strike exhibits which are internal documents of The Goodyear Tire & Rubber Company which were received in evidence subject to a motion to strike by The Atlantic Refining Company is hereby denied and the documents are hereby received in evidence as to both The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

It Is Further Ordered that the motion of The Atlantic Refining Company to strike Commission's Exhibit 32 as being an inter-office communication of Auto-Lite Company

be, and the same is hereby, sustained and said document is stricken as to The Atlantic Refining Company only.

It Is Further Ordered that the motion of The Atlantic Refining Company to strike certain testimony pertaining to the state of mind of dealers is hereby denied.

Earl J. Kolb,
Hearing Examiner.

March 21, 1958.

1124

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

INITIAL DECISION.

By Earl J. Kolb, Hearing Examiner.

James S. Kelaher and Peter J. Dias, for the Commission.

Cahill, Gordon, Reindel & Ohl, New York New York, by Thomas C. Mason and Mathias F. Correa, for respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pennsylvania, by Frederic L. Ballard, Jr., for respondent The Atlantic Refining Company.

This proceeding, is based upon an amended complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful certain contracts entered into between respondents The Goodyear Tire & Rubber Company, Inc., a wholly owned subsidiary of respondent The Goodyear Tire & Rubber Company and the Atlantic Refin-

ing Company, whereby The Goodyear Tire & Rubber Company, Inc., agreed to pay The Atlantic Refining Company a sales commission on all tires, batteries and accessories sold by said The Goodyear Tire & Rubber Company, Inc., to service stations and other outlets of The Atlantic Refining Company. The amended complaint further 1125 charged that respondent The Goodyear Tire & Rubber

Company, Inc., had entered into similar contracts with certain oil companies other than The Atlantic Refining Company, and that The Atlantic Refining Company had entered into a similar contract with The Firestone Tire & Rubber Company.

This proceeding is now before the hearing examiner for final consideration upon the amended complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions filed by all parties and briefs in support thereof, and reply briefs. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by the parties, and their briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings of fact, conclusions drawn therefrom and order:

1. Respondent The Goodyear Tire & Rubber Company is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company is engaged in the manufacture and in the sale and distribution of rubber products including tires and inner tubes, directly and through several wholly owned and controlled subsidiaries, including The Goodyear Tire & Rubber Company, Inc., which is primarily a marketing subsidiary.

2. Respondent The Goodyear Tire & Rubber Company, Inc., (hereinafter sometimes referred to as "Goodyear") is a wholly owned subsidiary corporation of The Goodyear Tire & Rubber Company, organized under the laws of the State of Delaware with its office and principal place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company, Inc., is engaged in the sale and distribution in interstate commerce of tires, innertubes, batteries, automotive parts and accessories which are known to the trade as TBA products and will be hereinafter so referred to.

3. Respondent The Atlantic Refining Company (hereinafter sometimes referred to as "Atlantic") is a corporation organized, existing and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at 260 South Broad Street, Philadelphia, Pennsylvania. Said respondent is engaged in the production and in the sale and distribution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers (hereinafter referred to as "distributors") and to service stations.

4. Respondent Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. This marketing territory is divided into six marketing regions which are, in turn, subdivided into twenty-nine districts, consisting of a city or other marketing center and the surrounding territory. The marketing regions and districts are as follows:

New England

Providence, R. I.
Springfield, Mass.
Hartford, Conn.
Boston, Mass.
New Haven, Conn.

New York

Syracuse, N. Y.
 Southern Tier, N. Y.
 Albany, N. Y.
 Rochester, N. Y.
 Watertown, N. Y.
 Buffalo, N. Y.

Philadelphia-
New Jersey

Philadelphia-Suburban, Pa.
 South Jersey
 Newark (or North Jersey)

Eastern
Pennsylvania

Reading, Pa.
 Allentown, Pa.
 Wilkes-Barre, Pa.
 Harrisburg, Pa.
 Williamsport, Pa.
 Wilmington, Del.

Western
Pennsylvania

Pittsburgh, Pa.
 Altoona, Pa.
 Greensburg, Pa.
 Erie, Pa.

Southern

Charlotte, N. C.
 Baltimore, Md.
 Richmond, Va.
 Jacksonville, Fla.
 Miami, Fla.

1127 5. As of April 30, 1956, there were approximately 394 salesmen calling on dealers and distributors of gasoline and lubricants, including service stations. These salesmen are divided into various classifications, dependent upon the functions which they perform as follows:

Type	Approximate Number	Function
Promotable dealer salesman	133	Sells Atlantic products and promotes recommended TBA to 'promotable dealers', which term includes lessee dealers and contract dealers interested in complete service station operation.

Type	Approximate Number	Function
Dealer salesman	25	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen (usually in areas of sparse distribution) or to special groups such as car dealers in other areas.
General salesman	54	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen or dealer salesmen, and also sells Atlantic products to smaller Commercial accounts.
Service salesman	147	Teaches dealers and their employees merchandising techniques and how to perform the services normally performed by first class service station operators. This teaching involves both petroleum products and TBA. For teaching purposes the salesman uses the TBA on hand at the station.
Wholesale salesman	35	Sells Atlantic products and promotes recommended TBA to distributors and wholesale dealers.

1128 6. All of respondent Atlantic's salesmen are paid on a salary basis. Promotable dealer salesmen also receive extra compensation based upon percentage gains in purchases of gasoline, motor oil and recommended TBA (and also for over-all gains) by those of their assigned dealers who have been in operation for a minimum of twelve months.

7. Respondent Atlantic sells its petroleum products to

more than 5,500 retail dealers, a substantial number of whom operate service stations (as distinguished from grocery stores, garages, and other like outlets), and to more than 200 distributors who, in turn, sell said products to more than 2,800 retail outlets, a substantial number of whom operate service stations. These retail dealers and distributors are divided into the following classifications:

Present Designation	Percentage of Total Regional Gasoline Sales By Each Customer Class	
	1951	1955
	Percent	Percent
1. Company-operated Station	1	0.1
2. Lessee Dealer	32	39.1
3. Contract Dealer	23	18.1
4. Commercial Account	15	16.6
5. Wholesale Dealer	3	1.1
6. Distributor	24	24.0
7. Jobber	2	1.0
Total	100	100.0

8. The usual form of lease entered into by respondent Atlantic and its lessee dealers was for a term of one year, with automatic renewal from year to year unless written notice was given prior to the expiration of any term. Rental provided by any lease was usually a flat rental plus a cents-per-gallon charge, dependent upon location of station, financial condition of lessee and potential income. Such

lease contained provisions relating to the use, main-
1129 tenance and general appearance of the station. In

the event of breach of any of the terms, conditions or covenants of the lease by the lessee, it was provided that Atlantic may, at its option, terminate the lease.

9. On April 1, 1953, respondent Atlantic adopted a long-term dealer lease policy under which any lessee dealer who has established a record of two years of satisfactory

operation became eligible for a three-year lease with rental remaining the same during the entire period.

10. Tires, batteries and accessories have become a necessary and integral part of the business operation of the Atlantic dealer. He cannot profitably and successfully operate his business without the added revenue from that portion of his business which also enables the dealer to give complete service to his customers. The service station is important to TBA manufacturers as an outlet for distributing to customers. It is to the interest of The Atlantic Refining Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

11. Prior to March 1951 (except as to three districts in which the Sales Commission Plan was tested beginning in 1950) respondent Atlantic purchased TBA for resale either directly or indirectly to Atlantic dealers. This purchase for resale arrangement was first begun in 1932 when respondent Atlantic began the sale and distribution of tires manufactured by the Lee Rubber & Tire Corporation. In 1937 a contract was executed with the Electric Storage Battery Company for the purpose and resale of Exide batteries in the Philadelphia region which was expanded to all marketing regions in 1945. Accessory items were added from time to time, including DuPont polishes, Thermoid fan belts, American Chain and Cable Company's weed chains and Fram oil filters. Distribution of such products to Atlantic dealers and distributors was made by respondent Atlantic either directly or through about forty-five warehouses located throughout its marketing area or through Atlantic supply dealers who distributed such products to other Atlantic dealers.

12. During the period that respondent Atlantic continued on the purchase and resale plan, Atlantic service

stations were identified as sellers of such sponsored TBA products as Lee tires and Exide batteries, and to some extent of other TBA handled:

1130 13. In 1951 after a test of the Sales Commission Plan of Goodyear and Firestone in three districts, Atlantic adopted the complete Sales Commission Plan of these companies in all six of its marketing regions. Atlantic assigned the entire marketing area by allocating the New York, New England and Philadelphia-New Jersey regions to Goodyear and the three remaining regions to Firestone.

14. The sales commission agreement entered into between The Atlantic Refining Company and The Goodyear Tire & Rubber Company, effective March 1, 1951, provided for the payment of commissions to Atlantic on the sales by Goodyear of its tires, batteries and accessories to Atlantic outlets, including service stations, distributors and consignees. The consideration of this agreement was the services to be rendered by the Atlantic sales organization in promoting the sale of Goodyear TBA products as outlined in said agreement. This agreement provided, among other things, for the payment of a commission of 10 percent on all sales of TBA to Atlantic dealers outlets, and 7½ percent on all sales of TBA to Atlantic franchise petroleum distributors. The Atlantic Refining Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company, effective as of March 1, 1951.

15. The services which were performed by The Atlantic Refining Company pursuant to its contract with Goodyear and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Atlantic personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the

TBA products of Goodyear or Firestone, and when dealers were selected would at times give advance notice of station openings or changes to Goodyear or Firestone and introduce the new dealers to the sales representative of Goodyear or Firestone, permitting such salesmen to complete any unfinished business with the outgoing dealer and enabling them to anticipate and to move promptly in handling the requirements of the new dealers.

(b) Atlantic gave assistance to dealers in arranging Goodyear or Firestone TBA supplies; took TBA orders from Atlantic dealers for either Goodyear or Firestone; and recommended the minimum Goodyear or Firestone inventory to be carried by the Atlantic dealer.

1131 (c) Atlantic frequently conducted dealer meetings at which the sale of TBA was discussed, in some instances with the active participation of Goodyear or Firestone.

(d) Atlantic operated training schools for dealers and prospective dealers which included suggestions for displaying and merchandising TBA. In the discussion of TBA, Goodyear or Firestone products were used ^{exclusively} during the training school course.

(e) Atlantic incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodyear or Firestone, and participated in promotions instituted by either Goodyear or Firestone.

(f) Atlantic also conducted tire clinics jointly with the personnel of Goodyear or Firestone which were important in familiarizing dealers in the care and repair of Goodyear or Firestone tires.

(g) Atlantic made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge, which served to augment the sale of Goodyear or Firestone TBA.

Initial Decision.

16. The sales of Goodyear TBA and commissions paid thereon under the Atlantic-Goodyear Sales Commission Plan were substantial as is shown by the following tabulation:

	Total Sales	Total Commissions
1951	\$ 2,445,808	\$ 239,250
1952	4,175,890	411,743
1953	5,067,565	500,437
1954	5,284,743	523,048
1955	5,700,121	557,599
1/56-6/56	3,133,905	296,988
Total	\$25,808,032	\$2,529,065

1132 17. The substantiality of the sales and commissions under the Atlantic-Firestone TBA Sales Commission Plan is shown by the following tabulation for the years 1951 to 1956:

	Total Sales	Total Commissions
1951	\$ 3,243,350	\$ 299,524
1952	4,349,616	404,948
1953	5,050,381	469,784
1954	4,867,689	452,083
1955	5,562,936	506,199
1/56-6/56	2,545,798	234,317
Total	\$25,619,770	\$2,366,855

18. Under date of March 1, 1951, Atlantic sent a form letter to all Atlantic dealers entitled "A Statement of Atlantic's TBA Policy". This letter announced the adoption of the TBA in the statement that "Your acceptance or rejection of the program is a matter of your own choice". Under date of August 28, 1952, respondent Atlantic addressed a similar form letter to all its dealers entitled, "A Restatement of Atlantic's TBA Policy". Under date of June 24, 1955, a similar letter entitled "No Forcing" was

[Sales Commission Plan and included therein

sent to all Atlantic dealers, and since that time has been given to new Atlantic dealers.

19. ' It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Atlantic and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Atlantic with Goodyear and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA; and has deprived other suppliers of TBA of a substantial portion of the TBA business of the Atlantic petroleum outlets.

20. In support of the charges of the complaint, sixteen former Atlantic dealers were called to testify in this proceeding. With the exception of three of these dealers, 1133 they testified to various forms of coercion, adopted by Atlantic salesmen in an effort to induce them to purchase sponsored TBA. Some of these witnesses testified that they had received the so-called non-foreing letter, but that they were told by Atlantic salesmen that these letters were not controlling insofar as purchases of non-sponsored TBA was concerned. The testimony of the witnesses called to support the complaint pertaining to coercion is as follows:

(a) John Chambers, an Atlantic lessee from November 1952 to November 1954, purchased the bulk of his TBA from the Goodyear supplier. Atlantic salesmen were always reminding him, that when his lease expired or was cancelled Atlantic would only accept sponsored merchandise, and that outside merchandise would not be accepted at all. This witness also testified that it was pointed out to him on a number of occasions that the acceptance or rejection of the Goodyear plan was up to the dealers.

(b) James Matthews, an Atlantic lessee from 1947 to 1957, was told at a meeting that dealers were free to buy

wherever they saw fit, but whenever salesmen called they told him differently. At the time of the change-over from Lee to Goodyear, his Lee signs were removed from his station, and he was told to get rid of Lee tires and Auto-Lite batteries and handle Goodyear. Matthews testified that he discontinued the Lee tires because he did not want his lease cancelled because of non-sponsored TBA. He was requested by Atlantic salesmen in 1953 to sign a mutual cancellation, but he promised to follow the line and went 100 percent with Goodyear. He took ten Auto-Lite batteries in trade, to which objection was made. Atlantic also objected to his handling DuPont anti-freeze. Matthews left the station in May 1957 due to bad health. He recalled receiving non-forcing letter dated March 1, 1951.

(c) Aniello L. Iacono, an Atlantic lessee from 1952 to 1954, had difficulty with Parris, the authorized TBA supplier, and began buying non-sponsored tires and batteries. He was asked by Atlantic salesman to get rid of the tires and batteries and when he refused, the salesman made an inspection of his place and claimed he was using untrained personnel, improper uniform, improper display, and maintaining a dirty station. His lease was not renewed.

(d) Isidore Jack Pollock, an Atlantic lessee from 1940 to 1953, testified that Atlantic salesmen objected to his purchase of a number of Lee tires at a special price, 1134 however, the sales supervisor stated that this would be satisfactory because of the number of years that Pollock had been with Atlantic, and he continued to purchase Lee tires thereafter. He purchased some Bowers batteries, and salesmen told him he was going to have his lease cancelled. Pollock left the station to take over a tavern.

(e) Francis J. Ballaron, an Atlantic lessee from 1953 to 1957, carried Goodyear tires and batteries purchased through Miller, an authorized distributor. He kept non-

sponsored tires on oil rack where Atlantic would not see them. Ballaron testified that he left the station because of pressure every month for not buying TBA where he should.

(f) James M. Meyers, Jr., an Atlantic dealer from 1950 to 1951, testified that he discussed non-forcing letter with Atlantic salesmen who told him to try buying other merchandise and find out what the letter meant.

(g) Norris Stein, was an Atlantic lessee, beginning July 26, 1954. About six months later he discontinued exclusive purchase of Firestone and was told by Atlantic salesmen that he would not long be an Atlantic operator. He stated that he had received no-forcing letter of June 22, 1955. Terminated his lease for reasons not involving TBA.

(h) Thomas J. Sullivan, Jr., an Atlantic lessee from 1953 to 1954, was told that Atlantic would like him to obtain all his products from Firestone. He bought some Bowers batteries and also Exide and was told by Atlantic salesman not to sell the batteries as they were not as good as Firestone and that he didn't want them displayed in the station. He removed the batteries from display. Sullivan further testified that he returned the Exide batteries and discontinued the Bowers batteries as he felt that if he rubbed Atlantic the wrong way that he would be in their disfavor, and that his lease might not be renewed. He stated that the Atlantic representative made no direct threats, but always left the impression that if he did not operate the way Atlantic wanted him to, the chances were that his lease would not be renewed. The Atlantic salesman always questioned him when he bought non-sponsored items and gave him the impression that he was expected to buy Firestone products. The salesman would ask him from time to time why he did not buy Firestone, and he got to the point where he bought all items from Firestone

because he was afraid of no lease renewal. It was put 1135 to him that he would not be forced to buy Firestone products, but Atlantic more or less expected him to do so. Sullivan sent in cancellation of lease because of price controversy.

(i) John Galle, an Atlantic lessee from 1954 to 1956, discussed with Atlantic salesman an offer of batteries and tires at prices lower than Firestone, and salesman informed him that he had signed an agreement to purchase TBA from Firestone and should not go against this agreement, and in addition Atlantic would not like to see competitive brands to Firestone in the station. He did not purchase these items, but continued to purchase Firestone tires and batteries. He received the non-forcing letter on June 22, 1955, but did not discuss it with the Atlantic salesman.

(j) Harry N. Hawes, an Atlantic lessee beginning in 1945, had three stations. In the first station he bought only Firestone TBA. In the second station carried Lee tires, and Atlantic salesman wanted to know what they were doing there, but he continued to handle them. In the third station he sold only Lee tires and some accessories from Firestone without much comment from Atlantic. Lease was not renewed on the second station, and the third station lease was cancelled at his request. Atlantic salesman refused to let the new dealer take over the Lee tires and batteries on hand.

(k) Richard Brown, Atlantic lessee from October 1955 to April 1957, because of dissatisfaction with Firestone, began to purchase Goodrich tires. Atlantic salesman told him that he did not like the purchase of non-sponsored items, as it was affecting his salary.

(l) James Parag, an Atlantic lessee from August 1, 1955, to March 1956, became dissatisfied with Firestone and began purchasing Goodyear tires and accessories from different sources. When Atlantic salesman saw the mer-

chandise on his shelves he told him that he could not handle them, that if he did not handle what Atlantic handled he would lose his lease, and also because it also affected the salesman's commission.

(m) James R. Kelly, an Atlantic lessee from September 1952 to March 1953, began with Firestone TBA. Later sold whatever tires customers wanted. Atlantic salesman would not let him change window valances, he was told to leave them alone to keep the station uniform. Had some Goodyear and Goodrich tires which he kept in the back room. He felt he would get in trouble if he did not.

1136 21. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodyear, were called as witnesses in this proceeding. This testimony was taken in three areas—Philadelphia, Pennsylvania, Wilmington, Delaware, and Baltimore, Maryland. These parties testified generally that they had difficulty in selling TBA to Atlantic stations and testified specifically as to reasons given by certain Atlantic dealers for not buying or selling their TBA items. This testimony as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor v. Loewe*, 235 U. S. 522. This latter testimony was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone.

22. In the course of its defense in this proceeding, The Atlantic Refining Company introduced the testimony of thirty-six Atlantic dealers and two ex-dealers. Substantially all of these witnesses testified to selling non-sponsored TBA in varying amounts without objection by Atlantic. Most of them testified to having received the

non-forcing letter issued by Atlantic similar to the letter of March 1, 1951, which this record shows was delivered to all its dealers and prospective dealers.

23. The hearing examiner recognized that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record as a whole shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carried some non-sponsored TBA to satisfy demands of their customers either in varying amounts or on a pick-up basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase non-sponsored as well as sponsored items on a pick-up basis to satisfy customer and demand. There was also in some instances evidence of confusion as to the definition of accessories among the dealers, as some included as accessories items generally considered as repair parts, as distinguished from accessories, and some dealers testified to carrying non-sponsored items which were, in fact, not supplied by Firestone or Goodyear. Many of the dealers called maintained a high sales volume in gasoline gallonage and also oil, and Atlantic would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such dealers.

1137 24. It is clear from the record in this proceeding that the Atlantic dealers did not consider the non-forcing letter as giving to them free and unhampered authority and the blessing of Atlantic to handle whatever TBA they might see fit. Both the dealers and the Atlantic salesmen accepted this letter for what it said; namely, that the dealer at the time of the changeover and prospective dealers thereafter had the right to select or reject the TBA sales program offered by Atlantic. The prospective dealer making application for an Atlantic station would

not likely reject offhand the program submitted by Atlantic, and such rejection could very well affect his selection as an Atlantic dealer. After a dealer selected a TBA program, the Atlantic salesman insisted, and saw to it, that the dealer hewed to the line, insofar as the more important items of TBA were concerned. The salesman would be expected to insist upon the purchase of sponsored TBA, as such purchases were reflected in the commission which the salesman received.

25. After giving consideration to the testimony of the various witnesses appearing in this proceeding, and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure were used on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items

Conclusions.

1. The complaint does not charge, nor does the evidence introduced in this proceeding prove, the existence of a conspiracy between Goodyear and Atlantic to restrict and restrain competition in the sale and distribution of TBA products.

2. There is no evidence that The Goodyear Tire & Rubber Company, or The Goodyear Tire & Rubber Company, Inc., engaged in, or participated in, any of acts or practices designed to force dealers and distributors of The Atlantic Refining Company to purchase Goodyear TBA products.

3. Neither the sales commission contract between Atlantic and Goodyear nor the contract between Atlantic and its dealers and distributors contain any clause or provision requiring such dealers or distributors to purchase only Goodyear TBA.

4. In making a determination as to whether leases made by Atlantic with its dealers are used to suppress competition, the extent to which they are in conformity with reasonable requirements in the field of commerce in which they are used will have a direct bearing on their legality. The housekeeping provisions of the leases are not unreasonable or oppressive, and the renewal and cancellation provisions of the leases are in conformity with those which ordinarily appear in many leases of property.

5. The consideration for the payment of commission to Atlantic under the sales commission contract is based upon substantial services rendered by Atlantic in promoting the sales of Goodyear TBA to Atlantic dealers and distributors.

6. No inference or implication can be drawn from the contractual relationship between Atlantic and its dealers, that the degree of control by Atlantic over its dealers is sufficient to force its dealers to purchase only sponsored TBA.

7. The evidence in this proceeding shows that leases have, on occasion, been cancelled because of TBA practices involving the purchase or display of non-sponsored TBA products.

8. It is further concluded that for the purpose of inducing the purchase of sponsored TBA by Atlantic dealers, Atlantic representatives did, in fact, coerce, and attempt to coerce, and force Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and Atlantic accepted the benefits of such acts and practices. These acts of coercion consisted of demands that dealers discontinue the purchasing and displaying of non-sponsored TBA under threat of lease cancellation, non-renewal of lease or other corrective action. Such coercion need not be 100 percent effective in order to constitute an unfair

method of competition or unfair act or practice in violation of the Federal Trade Commission Act.

9. The charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion even though it be found that the contracts entered into by the parties are not illegal.

10. The Federal Trade Commission has jurisdiction of the subject matter of this proceedings and of the respondents named herein.

11. The acts and practices of The Atlantic Refining Company, as herein found, which involve coercion of its dealers are all to the prejudice of the public and have 1139 a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitute unfair methods of competition and unfair acts, and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Order.

It Is Ordered that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale and distribution of tires, inner tubes, batteries and other automotive parts, accessories and supplies (hereinafter referred to as "TBA products"), in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Inducing, or attempting to induce, the purchase of TBA products of a particular supplier by Atlantic dealers by threatening to cancel or to not renew lease of dealer or to take other retaliatory action if said products are not purchased.
2. Threatening the cancellation or non-renewal of any

Initial Decision.

1140 contract or lease if the dealer purchases or continues to purchase TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.

3. Threatening the cancellation or non-renewal of any contract or lease if the dealer displays or continues to display TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.

4. The performance of any acts of intimidation or coercion, either through statements, oral or written, made directly to dealers or by representatives of respondent, which are designed to, or have, the purpose or effect of intimidating or coercing respondent's dealers or other customers to purchase TBA products sold by any designated supplier sponsored, recommended or approved by respondent.

5. Compelling, or attempting to compel, dealers by any means or method to sell and distribute only products supplied by a designated supplier sponsored, recommended or approved by respondent.

1141 6. Preventing, or attempting to prevent its dealers by means of threats, intimidation or coercion, from handling or displaying TBA or other similar products which the respondent does not sponsor, recommend or approve, or the sale of which is not promoted by the respondent.

It Is Further Ordered that the complaint be, and it is hereby, dismissed as to respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

Earl J. Kolb,
Hearing Examiner.

October 23, 1959.

1449

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—6486) • •

Commissioners:

Earl W. Kintner, Chairman

Robert T. Secrest

Sigurd Anderson

William C. Kern

OPINION OF THE COMMISSION.

By Kintner, Chairman:

This proceeding is based upon an amended complaint charging The Goodyear Tire & Rubber Company and its wholly owned selling subsidiary, The Goodyear Tire & Rubber Company, Inc., (hereinafter collectively referred to as "Goodyear"), and The Atlantic Refining Company with acts, practices and agreements constituting a violation of Section 5 of the Federal Trade Commission Act. 15 U. S. C. § 45 (1958). Respondents answered admitting in part the allegations of the complaint but denying that Section 5 had been contravened.

The principal issue framed by the pleadings is the legality of a contract between these respondents calling for the payment by Goodyear of a sales commission to Atlantic in return for sales assistance in promoting automotive tires, batteries, and accessories (hereinafter referred to as "TBA" or "TBA products") of Goodyear to retail and wholesale petroleum outlets of Atlantic. In addition, Atlantic is charged with having entered into a substantially identical agreement with The Firestone Tire and Rubber Company, and Goodyear is charged with having entered into such agreements with a number of oil companies

1450 other than Atlantic, including Shell Oil Company.¹

Although Atlantic and Goodyear are the only respondents in the instant case, Shell and Firestone are joined as respondents in a companion case, Docket 6487, and in another companion case, Docket 6485, The Texas Company and The B. F. Goodrich Company are paired as respondents.

The complaint charges, in substance, that the success enjoyed by Goodyear and Firestone in selling to Atlantic outlets has been purchased at the expense of competing TBA suppliers at the manufacturing and wholesale levels. Counsel supporting the complaint contend that the Atlantic-Goodyear and Atlantic-Firestone sales commission contracts are unlawful because, *in conjunction with Atlantic's economic power over its ostensibly independent wholesale and retail petroleum outlets*, these contracts operate to stifle the free choice of Atlantic's retail and wholesale dealers insofar as their TBA purchases are concerned. Among the unlawful competitive effects stemming from Atlantic's sales commission contracts charged by the complaint are these: (1) That suppliers of TBA competing with Goodyear and Firestone at the wholesale level have been foreclosed from access to Atlantic's retail outlets on the same competitive terms as have been made available to Goodyear and Firestone; (2) That competing manufacturers of tires and other TBA items have been foreclosed from access to Atlantic's wholesale distributors on the same competitive terms as have been made available to Goodyear and Firestone; (3) That competition between

1. Other oil companies having sales commission arrangements with Goodyear include Anderson-Pritchard Oil Corp., Ashland Oil and Refining Co., The Carter Oil Co., D-X Sunray Oil Co., Quaker State Refining Co., Richfield Oil Co. (accessories only), The Shamrock Oil and Gas Corp., Shell Oil Co., and Sinclair Refining Co. (accessories only).

Goodyear and Firestone in selling to wholesale and retail outlets of Atlantic has been destroyed; (4) That a substantial number of Atlantic's petroleum distributors and service station operators have been denied their right to act as independent businessmen in exercising freedom of choice as to TBA products which they may purchase and stock for resale; and (5) That the consuming public has been deprived of the benefits of free competition at the wholesale and retail levels insofar as TBA distribution through service station outlets under the sales commission plan is concerned.

1451 Respondents deny these allegations and assert that their sales commission contract is a legitimate and competitive method of distributing TBA which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

After hearings extending from the latter part of 1956 into November 1958, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to Goodyear but holding that Atlantic, by forcing a substantial number of its dealers to purchase sponsored TBA through threats of lease cancellation or other retaliatory action, has engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. He further held that the charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion on the part of Atlantic even though the sales commission contracts themselves are not illegal. An order was entered against Atlantic prohibiting future acts of coercion or intimidation designed to force Atlantic dealers to purchase TBA products sponsored by Atlantic.

Both sides have appealed from the initial decision. Counsel supporting the complaint contend that, while the

order entered by the hearing examiner is well supported by the evidence of record, it will not be an effective means of remedying the unlawful effects on competition caused by the sales commission plan. They seek an order restraining respondents from continuing with their present sales commission agreement and enjoining them from entering into similar agreements in the future. They also contend that Atlantic should be enjoined from purchasing TBA products from any manufacturer or other vendor of such products for resale to any wholesalers or retailers of Atlantic petroleum products, "... or for distribution in any other manner, directly or indirectly, to any of the aforesaid wholesalers or retailers of Atlantic petroleum products."

Reply briefs were filed by Atlantic and Goodyear to the appeal brief of counsel supporting the complaint, and by counsel supporting the complaint to the appeal brief of Atlantic. Oral argument was heard by the Commission on June 23, 1960, and the matter is now before the Commission for decision. We find that Atlantic has in fact coerced 1452 a substantial number of its dealers to purchase substantial amounts of sponsored TBA through threats of lease cancellation or other retaliatory action. We further find that Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. For reasons set forth hereinafter, we conclude that the exercise of this power by Atlantic through the use of the sales commission plan in favor of Goodyear constitutes an unfair method of competition and an unfair act or practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

Characteristics of the Sales Commission Plan.

Motorists may purchase replacement TBA items from several major classes of distributors. Manufacturers of these items, for example, Goodyear and Firestone, maintain either company-owned or franchised wholesale and retail distribution outlets in all of the marketing areas for TBA products considered in the course of the hearings in this case. Gasoline service stations constitute a second major class of outlets for TBA products. According to a 1947 market survey relied upon by Goodyear in implementing its sales commission program with The Shamrock Oil and Gas Corporation of Amarillo, Texas, motorists purchase approximately 37 percent of their replacement tires and tubes, 44 percent of their replacement batteries, and 20 percent of their automotive accessories from gasoline service stations.²

The complaint in this case alleges that "service stations by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products." The truth of this allegation is conceded by both Goodyear and Atlantic, and Goodyear also admits that it " * * * sells TBA products directly and through wholesalers to many customers, including service stations who purchase for resale to consumers for replacement use in their automobiles,"

1453 Service station operators may purchase their requirements of TBA from two principal sources: (1) Local wholesale TBA dealers, representing Firestone, or

2. Atlantic estimated in 1948 that approximately 21 percent of all replacement passenger tires are sold by service stations. Although Atlantic's estimate is considerably lower than Goodyear's, it is nevertheless clear that service stations account for a substantial percentage of total TBA replacement items sold to motorists.

Goodyear, or some other TBA manufacturer; or (2) Oil companies chiefly engaged in refining and distributing petroleum products which also purchase TBA products from manufacturers of these items, for resale along with the refinery products such oil companies distribute through their respective marketing organizations. TBA purchased by oil companies for resale may either be branded with a particular oil company's principal brand, for example, "Gulf," or with a private brand controlled by an oil company but used exclusively for TBA and not for refinery products, for example "Atlas," or with the supplying manufacturer's own brand, for example, "Lee" (tires) or "Exide" (batteries).

No particular term is used in the industry to describe the marketing technique whereby service station operators purchase TBA from independent local wholesalers, but the term "purchase-resale" is customarily used to characterize the marketing technique whereby oil companies purchase and resell TBA to their respective service station dealers. The sales commission method of distributing TBA is a hybrid deriving certain of its attributes from the first and other attributes from the second of these marketing techniques. Both the purchase-resale plan and the sales commission plan make use of the marketing facilities of marketing oil companies, but in different ways and with differing competitive effects. This may be illustrated by contrasting the purchase-resale method of distributing TBA used by Atlantic prior to 1951 with the sales commission method adopted by Atlantic in 1951 and used by the company since that time.

Atlantic's Purchase and Resale Plan. Sometime in 1932, Atlantic commenced to purchase "Lee" tires from the Lee Rubber and Tire Corporation and to resell such tires to its wholesale and retail petroleum distributors. Later, in 1937, Atlantic commenced to purchase "Exide" batteries from

the Electric Storage Battery Company (hereinafter referred to as "Exide") and resell such batteries, along with "Lee" tires, to Atlantic dealers. Thereafter, Atlantic began to purchase and resell the following automotive accessories:

1454	Products	Supplier
	DuPont polishes and chemicals	E. I. du Pont de Nemours and Company Wilmington, Delaware
	Thermoid fan belts and radiator hose	Thermoid Corporation Trenton, New Jersey
	Fram oil filters	Fram Corporation Providence, Rhode Island
	Schrader valves	A. Schrader Sons Brooklyn, New York
	Weed chains	American Chain and Cable Company York, Pennsylvania

Among the duties undertaken by Atlantic in connection with this program were the purchasing, financing, shipping, warehousing and selling of TBA items to its various classes of retail and wholesale petroleum dealers. Commenting on his company's TBA program in 1950, Mr. S. J. Heideman, TBA Manager for Atlantic, commented that "We receive a good gross margin in keeping with the duties left to us . . .". Moreover, the overall satisfaction of Atlantic's dealers with the Lee-Exide arrangement was evidenced by the results of a TBA brand preference survey undertaken by Atlantic's Sales Research Section in 1948 and 1949. More than 1,000 service station dealers representing seven major oil companies, including Atlantic, located in 47 cities from Massachusetts to Florida were interviewed during the course of this survey. Of the Atlantic dealers interviewed, 67 percent preferred Lee tires and 79 percent preferred Exide batteries over competing brands of tires and bat-

teries. Eleven percent of Atlantic's dealers stated a preference for Goodyear tires, 4 percent for Firestone tires, and the remainder announced a preference for various other tire brands. No preference for any particular brands of accessory items was found to exist, although "A definitely unsatisfactory supplier-dealer relationship" on accessories was observed. Sixty-seven percent of the Atlantic dealers contacted indicated that they would rather obtain their TBA requirements from several sources rather than a single source, the principal reasons given therefor being price advantages and the variety of brands. Of the remaining 33 percent of Atlantic dealers, who preferred 1455 a single source of supply for TBA products, less than 4 percent gave as a reason the fact that the single supplier could provide them with a complete line of TBA—better service was given as a reason by 35 percent of the Atlantic dealers preferring a single source of supply, and price was given as a reason by an additional 32 percent. Atlantic's Changeover to the Sales Commission Plan.

Contemporaneously with the TBA brand preference survey of service station dealers described above, Atlantic management was actively considering possible alternatives to their purchase-resale arrangement with Lee. On January 19, 1948, exploratory letters were sent to five major tire manufacturers, The Goodyear Tire & Rubber Company, United States Rubber Company, The B. F. Goodrich Company, The Firestone Tire & Rubber Company, and General Tire & Rubber Company, inquiring " * * * what interest you may have in the sale of your tires and tubes through Atlantic outlets." The tire companies were informed of Atlantic's desire " * * * to consider your propositions on first line, second line, and private brand, or as many of these lines as you merchandise."

To assist the tire companies in preparing their quotations, Atlantic estimated it would require approximately

300,000 passenger tires and 40,000 truck tires annually, with tube requirements approximating 70 percent of tire requirements. Proposals were requested not only as to principal brands of the tire companies ("Goodyear," "Firestone," etc.) but also as to secondary brands controlled by these companies ("Kelly-Springfield," "Fisk," "Federal," "Miller" and "Hood") and as to private brands as well. Mansfield Tire and Rubber Company and Lee were also contacted and requested to submit proposals on a private brand tire.

A detailed analysis of responses received from the various tire companies was presented to Mr. D. T. Colley, Vice President in Charge of Domestic Sales of Atlantic, in a memorandum of June 22, 1948, from the company's TBA Manager Mr. Heideman. This memorandum concluded with the statement:

"This presentation and Atlantic's benefits with the several companies has been discussed at length with the members of the T.B.A. Products Committee. It was their unanimous opinion that Lee appeared to be the best choice for our company. To their approval, I would like to add my own, since it is my opinion 1456 after careful analysis that the Lee franchise is the best available at the present time for Atlantic."

In a subsequent memorandum of August 24, 1948, Mr. Heideman set forth several reasons why a proposed experiment then under consideration involving the sale of Firestone tires in one sales district of Atlantic should *not* be adopted:

"It is apparent * * * that it would be unreasonable to expect too great an expansion of our present sales by the addition of a better known tire. As a matter of fact, it is our opinion that there is a very real possibility of a smaller market with Firestone due to their presently established company stores and distributors.

Opinion of the Commission.

Volume purchase requirements would leave a great number of our dealers in a poor competitive position.

"* * * neither Firestone batteries no accessories have the national acceptance of the lines we presently handle * * * [T]here is certainly an indication that consumer acceptance of the Firestone brand in batteries is very limited."

Nevertheless, negotiations with the tire companies continued throughout the remainder of 1948, and in May 1949, Goodyear expressed its willingness to offer a TBA program to Atlantic. However, it was Firestone which was selected for Atlantic's first experiment with the sales commission plan. In a letter of January 10, 1950, to the Regional Manager of its New York Region, an Atlantic official explained:

"As you know, for the past year we have been studying T.B.A. as to its profitability to the Company. Our most recent findings indicate that it is questionable whether this venture is paying us to the degree that the effort expended warrants.

"In our approaches to the subject, we have had discussions with various major tire manufacturers who, as you know, are interested in handling the entire T.B.A. line, paying us a commission.

1457 "The proposition that seems most acceptable to us is one offered by Firestone. I will not attempt to go into detail covering this proposition, but when you come to Philadelphia for the Regional Manager's Meeting next week, Mr. Heidemann (sic) plans to sit down with you and go over the proposition with the thought in mind that you will elect to have your Region be the guinea-pig."

As it turned out, however, the Firestone plan was not introduced into the New York area. Instead, operations under the Firestone commission plan began in Atlantic's Erie, Pennsylvania, district on March 30, 1950, and in the

Wilmington, Delaware, district on April 4, 1950. Operations under a sales commission plan with Goodyear commenced on an experimental basis in Atlantic's Newark, New Jersey, sales district on June 12, 1950. After these programs were instituted, Atlantic's Sales Research Section conducted a secret poll in July and August, 1950 among 600 of the 750 Atlantic dealers and distributors in the three TBA test districts. The purpose of this poll was to determine the preference of Atlantic dealers as between the Lee-Exide program and the sales commission program. Of the 123 dealers responding to the poll, 45 percent preferred the new sales commission plan, 40 percent preferred the former Lee-Exide arrangement, and 15 percent showed no preference for either plan.

In December, 1950, Atlantic contacted seven manufacturers of batteries, including Exide and Gould-National Batteries, Inc., " * * " in an attempt to discover whether they had at present or contemplated in the future a battery program for direct dealer merchandising similar to the commission plan offered by certain tire companies." This suggests that Atlantic was considering limiting the sales commission contracts with Firestone and Goodyear to tires and tubes only, or perhaps to tires, tubes and automotive accessories only, with a separate sales commission arrangement for batteries with a supplier who could furnish a more widely-known battery than the "Firestone" and "Goodyear" brands. (Actually, Goodyear does not manufacture batteries, but instead purchases batteries marked with the "Goodyear" label from Electric Auto-Lite Company and Gould-National Batteries, Inc.)

Favorable replies were received from several of the battery manufacturers, with Exide showing particular interest in such a program. This company's manager for automotive replacement sales responded to the Atlantic inquiry on December 22, 1950:

1458 "Currently all Exide automotive replacement battery

sales to dealers are made through our Wholesale Distributors, thus affording prompt delivery through many warehouses.

"Your letter of December 15 inquires as to our plans for a commission arrangement to be offered national oil accounts on direct sales to dealers. We believe that our experience with this type of operation in past years should be of great value to you. Therefore, I suggest that immediately after the first of January you arrange for a meeting with interested members of your organization for a complete discussion of the many phases of this subject."

Negotiations between Atlantic and Exide were never consummated, however, and on February 14, 1951 a sales official of Exide reported to his superior as follows:

"Mr. S. J. Heidman (sic), T.B.A. manager of the Atlantic Refining Company called today to give me advance confidential information regarding a decision made this morning by top management of the Atlantic Refining Company regarding future handling of T.B.A. sales to Atlantic dealers.

"Effective as quickly as the changeover can be made, all T.B.A. sales to Atlantic dealers will be handled on a commission arrangement.

"... Both Firestone and Goodyear had previously been approached regarding a plan whereby they would sell tires only to the Atlantic Refining Company accounts on a commission arrangement and had flatly refused such a plan insisting that either the complete program or none be sold by them."

TBA Manager Heideman submitted a memorandum entitled "T.B. Conversion to Firestone & Goodyear Programs" to Vice President Colley of Atlantic on March 21, 1951, summarizing the changeover to the sales commission program:

1459 "On February 14th, the decision was made to swing over to the Commission Plan of T.B.A. marketing

effective March 1st. It was arranged for three regions (Philadelphia-New Jersey, New England and New York) to market the program of the Goodyear Tire and Rubber Company, and the other three (Eastern Pennsylvania, Western Pennsylvania, and the South) were to market the program of the Firestone Tire and Rubber Company. *The split was largely a matter of regional selection, decided upon by local advantages enjoyed by the respective rubber companies but influenced by staff determinations to have the two rubber companies competing in different localities for an equal share in the development of the Atlantic dealer's T.B.A. business.* Although this move was sudden, events leading up to it were developed in an orderly fashion over a period of years.

"It will be interesting to review some of the advantages that we enjoy under the Commission Plan. We are relieved of the purchasing function . . . We do not warehouse or deliver any merchandise; we are not involved in the handling of accounts, such as invoicing or credit and collection work; we do not issue catalogs or price books nor do we have to provide point-of-sale promotional helps. All of these responsibilities as well as sales training help are assumed by the rubber manufacturers. We assist in the selling job as well as in the dealer training and merchandising task, and for this effort receive a commission which varies according to class of account and type of merchandise, but has been averaging well over 9%.

" . . . We are indeed fortunate in having these two companies competing against one another for a more secure or favorable position with Atlantic. We stand to gain from this arrangement whether we are in a buyer's or seller's market.

"We have tried to estimate how our 1950 actual experience on T.B.A. would have compared with the same volume of performance if it were accomplished under the Commission Plan. Our T.B.A. volume * 1460 *excluding the three test districts* amounted to seven and a half million dollars. Our gross profit ranging

from 20 to 30% on the different products amounted to approximately \$1,664,000. Estimated expenses chargeable to this operation total \$2,071,000. This would indicate a loss of about \$407,000."³ (Emphasis added.)

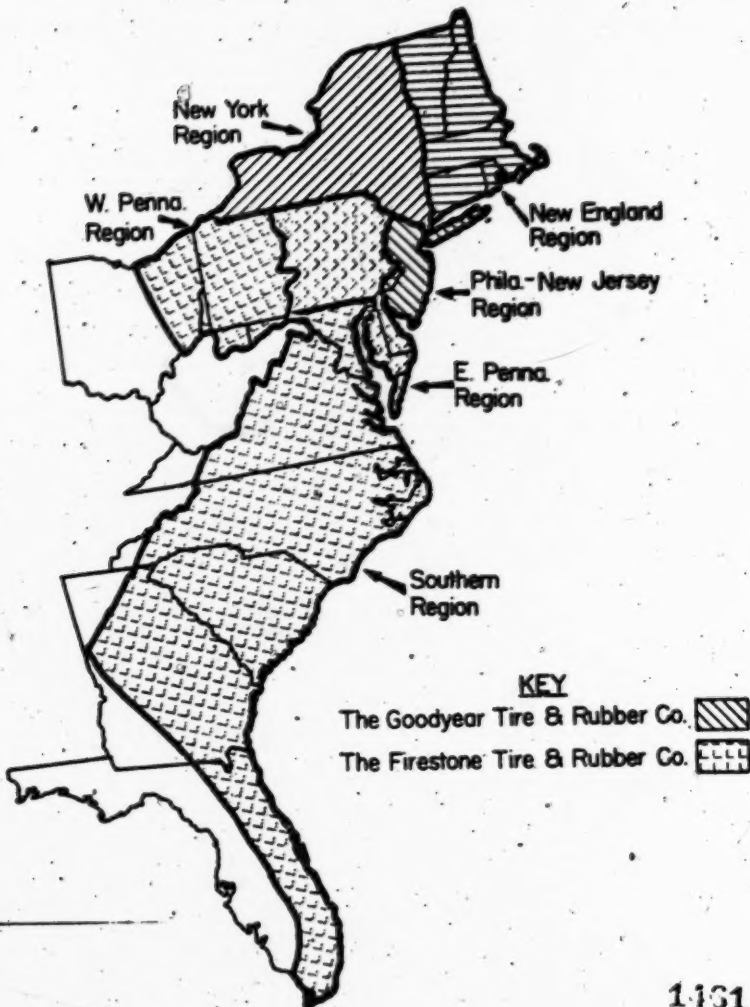
Map I, below, shows the manner in which Atlantic's marketing area was finally divided between Goodyear and Firestone. Although the three regions assigned to Firestone constitute a much greater geographical area than do the regions assigned to Goodyear, the TBA sales volume by the two rubber companies to Atlantic dealers and distributors within their respective assigned areas has generally been very nearly the same in every year since 1951, as indicated by Table I, below. This table shows that during the first 6 years of Atlantic's operation under the sales commission plan, Firestone's sales volume to Atlantic accounts totalled \$26,078,095 and exceeded the sales volume of Goodyear by only \$105,000.

3. Whether Atlantic's purchase-resale program was as unprofitable in reality as appeared from the accounting procedures used by the oil company was questioned in a memorandum from the sales manager of Exide to the vice-president of this company in February, 1951:

"The accounting procedure set up by the Atlantic Refining Company was such that expenses charged against T.B.A. sales appeared to make this operation unprofitable. As a result of this and because the top management of the Atlantic Refining Company believed that their own men should participate only in the sales of petroleum products, it was decided early in 1950 to try out the Firestone and Goodyear sales commission plan . . ."

MAP 1

THE ATLANTIC REFINING CO.
DIVISION OF MARKETING REGIONS
BY TBA SALES COMMISSION PLANS
EFFECTIVE MARCH 1, 1951



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Table I

**TBA Sales Volume by Firestone
and Goodyear to Atlantic Accounts,
and Commissions Paid Thereon,
June, 1950 Through June, 1956**

	Goodyear Sales Volume	Firestone Sales Volume	Goodyear Commis- sions	Firestone Commis- sions
6-50/12-50	\$ 165,578	\$ 458,325 ¹	\$ 15,447	\$ 43,894 ¹
1951	2,445,808	3,243,350	239,250	299,524
1952	4,175,890	4,349,616	411,743	404,948
1953	5,067,565	5,050,381	500,437	469,784
1954	5,284,743	4,867,689	523,048	452,083
1955	5,700,121	5,562,936	557,599	506,199
1-56/6-56	3,133,905	2,545,798	296,988	234,317
Total	\$25,973,610	\$26,078,095	\$2,544,512	\$2,410,749

In 1952, the first full year in which the sales commission plan was operative in all Atlantic sales districts, combined sales of Goodyear and Firestone TBA to Atlantic dealers and distributors amounted to \$8,525,506, and the two rubber companies paid a total of \$816,691 in sales commissions to Atlantic. The success with which Atlantic transferred its own former TBA sales volume under the purchase-resale plan to Goodyear and Firestone under the sales commission plan may be gauged from the fact that Atlantic's TBA sales volume in 1949, the last full year of operation under the purchase-resale plan, amounted to \$6,697,471. In 1950 Atlantic continued the purchase-resale

1. Includes period from April, 1950 through December, 1950.

Note: In 1950, the sales commission plan was used in only 3 of Atlantic's 34 sales districts. The sales commission plan was not introduced in all 34 Atlantic sales districts until March 1, 1951.

plan in all except 3 of its 29 sales districts, and in that year the oil company's TBA sales volume was \$7,581,760. 1463 The sales gains accruing to Goodyear and Firestone as a consequence of their sales commission contracts with Atlantic were accompanied by a corresponding loss in sales by Lee and Exide even though both companies made vigorous efforts to retain the business of Atlantic dealers and distributors after Atlantic switched to the sales commission plan. Lee opened new factory branches in Hartford, Connecticut; Providence, Rhode Island; and Syracuse, New York for this specific purpose. All branches of Exide were instructed to make it "their number one job" to solicit the business of Atlantic dealers and distributors. Nevertheless, within nine months after Atlantic began sponsoring Goodyear TBA on March 1, 1951, Lee concluded that "approximately 25% of the Atlantic Refining Company business will be salvaged this year." Seven months after the changeover, Exide found that it had retained all or part of the business of 22.5 percent of the better Atlantic accounts and all or part of the business of 24.7 percent of the total number of Atlantic accounts. Thus, some 75 percent of Lee-Exide sales to Atlantic distributors and dealers were lost within a nine-month period in 1951, even though a market survey conducted by the Atlantic Sales Research Section in 1949 had shown that 67 percent of Atlantic dealers and distributors preferred Lee tires and 79 percent preferred Exide batteries.

Lee's Vice President in Charge of Sales, Mr. W. F. Minderscheid, complained bitterly to Atlantic about the wholesale replacement of Lee advertising signs at Atlantic stations with Goodyear advertising signs shortly after the sales commission plan was undertaken on a test basis by Atlantic in 1950:

"I was under the impression, also, where dealers wanted to continue to handle Lee Tires through us it

would be all right for them to do so and we could still have our identification on those locations, however, I find that even though the dealers continue to handle our tires their stations are identified with competitive signs. For instance, in the Newark District our identification is being taken down and Goodyear will be erected even though the dealer still wants to handle Lee Tires."

TBA sales by Firestone and Goodyear to Atlantic outlets continued to grow, and by 1955, the last full year for which data are available, combined sales of the two 1464 rubber companies under their sales commission contracts with Atlantic amounted to \$11,263,057. In order fully to understand the devastating competitive effects on manufacturers and wholesalers of TBA products competing with Firestone and Goodyear which have resulted from the latter two companies' sales commission contracts with Atlantic, however, some further understanding of the functioning of the sales commission system is necessary.

Mechanics of the Sales Commission System.

Goodyear and Firestone maintain either company-owned or franchised wholesale outlets in most of the principal cities and in many smaller communities throughout the entire marketing area of Atlantic Refining Company. Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. As has been shown, this marketing territory is subdivided into six sales regions, three of which have been assigned to Goodyear and three to Firestone (See Map I, supra).

In cities and towns where Atlantic retail stations are located, such stations are assigned to a local Goodyear

distributor (if in Atlantic's New England, New York or Philadelphia-New Jersey sales regions) or to a local Firestone distributor (if in Atlantic's Eastern Pennsylvania, Western Pennsylvania or Southern sales regions). The assigned TBA distributor is intended to be the supply point from which the Atlantic dealer will purchase a substantial percentage of his requirements of TBA.

The vast majority of Atlantic's retail service stations are operated by independent businessmen who either own or lease their stations. These dealers not only buy and sell Atlantic petroleum products, but also offer TBA at their stations, and in addition perform various automotive services and repairs. Atlantic maintains sales offices throughout its marketing area and employs salesmen whose duty it is to solicit orders for Atlantic petroleum products from Atlantic dealers, and to perform other functions for the oil company in its dealings with its service station operators.

When orders for petroleum products are obtained, the salesmen cause such products to be delivered to the Atlantic dealers, who pay for them at time of delivery or at other specified times. The same Atlantic salesmen 1465 also act as sales agents for Goodyear or Firestone, soliciting TBA orders from Atlantic dealers, frequently accompanied on their rounds by salesmen employed by either the local Goodyear or Firestone distributors. If TBA orders are obtained, such orders are turned into the appropriate TBA suppliers—the local distributors of either Goodyear or Firestone—who deliver the merchandise and are paid by the Atlantic dealers. The TBA suppliers, in turn, make reports of such sales to the District Sales Offices of their respective companies, either Goodyear or Firestone.

Under the terms of the sales contracts between Goodyear and Atlantic and Firestone and Atlantic, Atlantic is

entitled to a commission amounting to 10. percent of the net sales value of all sponsored (i.e., Goodyear or Firestone) merchandise sold by Atlantic retail dealers, as consideration for the assistance given by the Atlantic sales organization in obtaining TBA orders from Atlantic dealers.⁴ These payments are made by Goodyear and Firestone directly to Atlantic each month. Atlantic incurs no expense in connection with the purchasing, financing or warehousing of the TBA so supplied and has received sales commissions from Goodyear and Firestone over the years equivalent to more than 9 percent of the net sales value of all TBA products sold by these rubber companies to Atlantic dealers and distributors.⁵

1466 Tires and tubes comprise the most important of the three components of the TBA line, accounting for about 70 percent of total TBA sales to Atlantic outlets, with batteries and accessories representing about 15 percent each. Goodyear produces its own tires and tubes, and the more important categories of automotive acces-

4. Atlantic has some 236 wholesale distributors, and is entitled to a commission of $7\frac{1}{2}$ percent on purchases of sponsored TBA by these jobbers, compared with 10 percent on purchases by Atlantic's retail dealers.

5. Goodyear's reasons for entering into its sales commission agreement with Atlantic were set forth in a "Confidential" memorandum of February, 1951, written by Mr. S. A. Gaylord, Goodyear's Manager of Sales to oil company outlets:

" . . . As you know we have recognized the desirability of Atlantic distribution for many years and the need for more oil company distribution in the new territory now assigned to us, which represents more than 50% of the Atlantic T. B. A. sales and potential.

"Early last year when supplies were plentiful and signs for the future pointed to over-production and increased competition, we mutually agreed on the marketing experiment with Atlantic in our respective Newark District territories with a commitment for

sories, including tire retread and repair materials, fan belts and radiator hose. Batteries marked with the "Good-year" label are purchased for resale from Electric Auto-Lite Company and Gould-National Batteries, Inc., while the following accessories are purchased by Goodyear for resale under the original manufacturer's own brands:

Accessory	Brand	Manufacturer
Spark Plugs	AC	AC Spark Plug Div., General Motors Corp.
Oil Filters	AC	Same as above
1407 Oil Filters	Purolator	Purolator Products, Inc.
Cleaners, Polishes and Waxes	du Pont	E. I. du Pont de Nemours & Co., Inc.
Cleaners, Polishes	Johnson	S. C. Johnson & Son, Inc.
Cleaners, Polishes and Waxes	Simoniz	Simoniz Company
Cleaners, Polishes and Waxes	Mac's	Mac's Super Gloss, Inc.
Radiator Chemicals	du Pont	E. I. du Pont de Nemours & Co., Inc.
Radiator Chemicals	Warner	Warner-Patterson Co.
Auto Lamps and Bulbs	Westinghouse	Lamp Division Westinghouse Electric Corp.
Wiper Blades	Anco	The Anderson Company

The sales commission method of distributing TBA products thus affects competitive relationships among producers and distributors of various products, all linked by but one common factor: the motor vehicle. As a consequence, in

expanded territory if the Goodyear Commission Plan proved successful—which it did.

"It is true that even at a late date we could have withdrawn from our commitment to Atlantic, however, we would have been out of the account for keeps and our competition [Firestone], which placed no restrictions on moving in, would have the account 100 percent.

"... The decision of our Management was made after consideration of all factors and particularly because it gave Goodyear the opportunity of entering into a long-term relationship with Atlantic providing our performance is satisfactory."

order to show the network of unlawful trade restraints and inhibitions permeating the sales commission system of distributing TBA, it is necessary first to describe the marketing structure of Atlantic and to define the manner in which this company exercises control over its wholesale and retail petroleum distributors, and next to describe how the sales commission plan enables Goodyear to integrate such market control into its own system of distribution.

Distribution System of Atlantic Refining Company.

Atlantic is a major integrated producer, refiner, and distributor of petroleum products. The company was organized in 1860, and was acquired by Standard Oil Company in 1874. Since the dissolution of the Standard Oil

Trust in 1911, Atlantic has been operated as a separate corporate entity. In 1948, Mr. S. J. Heideman of

Atlantic stated that "Atlantic's percentage of the national gasoline market is 2½% . . ."; and since the oil company markets its gasoline along the Atlantic Coast states and in parts of Ohio and West Virginia only, it may be inferred that Atlantic's share of gasoline sales in its own marketing area is substantially in excess of 2½ percent. Sales and operating revenue of this oil company totalled more than one-half billion dollars in 1954.

Atlantic markets its refinery products to three major classes of customers: (1) wholesale distributors; (2) retailers (chiefly service stations but including also garages, grocery stores, restaurants with outside gasoline pumps, etc.); and (3) commercial accounts. This opinion is not concerned with the last-named group, which accounted for 16.6 percent of total gasoline sales by Atlantic in 1954, as these accounts are customers who purchase for their own consumption and not for resale.

Atlantic sold gasoline and other petroleum products directly to some 5,537 retail customers in 1956, and these direct retail dealers accounted for 57.2 percent of total gasoline sales by Atlantic in 1955. Atlantic's direct dealers are of two classes: (1) Lessee dealers, who accounted for 39.1 percent of total Atlantic gasoline sales in 1955; and (2) Contract dealers, who accounted for 18.1 percent of gasoline sales by Atlantic in the same year. Shown below in Table II are the numbers of lessee and contract dealers purchasing petroleum products directly from Atlantic in each of its marketing regions in June, 1956:

Table II.

**Numbers of Direct Lessee and Contract Dealers of
Atlantic Refining Company in June 1956,
By Marketing Regions.**

Region		Lessee Dealers	Contract Dealers
	New England	495	220
	New York	321	263
	Philadelphia-New Jersey	481	640
1469	Eastern Pennsylvania	480	1075
	Western Pennsylvania	317	725
	Southern	399	121
	Grand Total	2493	3044

Lessee Dealers. The principal characteristic distinguishing lessee dealers from contract dealers is that the former do not own their own business properties, but instead lease them from Atlantic. Lease terms range from three months to three years; most lessee-dealers operate under one-year leases, however. The leasehold instrument does not require the lessee to handle Atlantic products, but does provide that the premises shall be used for the operation of a "first-class automotive service station retailing petroleum

products and TBA merchandise normally handled at competitive service station outlets." Rental payments by lessees are based on specified percentages of gross monthly sales of all types of merchandise, including TBA. These percentages are as follows:

0 percent.....	First	\$ 500 monthly
6 percent.....	Next	\$2000 monthly
5 percent.....	Next	\$2000 monthly
4 percent.....	Next	\$2000 monthly
3 percent.....	Over	\$6500 monthly

At the time he executes his lease with Atlantic, each lessee-dealer is required to sign a separate document known as an "Eleven Point Lease Letter". This letter defines standards of operation for Atlantic lessee-dealers. Illustrative of these is the standard for "Housekeeping":

"1. Housekeeping—Clean, sanitary premises, inside and out."

Other standards set forth in the "Eleven Point Lease Letter" are "Use and Upkeep", "Display", "Illumination", "Personnel", "Hours of Operation" ("Uniform daily operating schedule based on buying habits of potential trade in the area"), "Services", "Adequate Inventory", "Sales Promotion", "Prices", and "Accounting".

These standards of operation are implemented by 1470 Atlantic not only through the surveillance of its sales force, but also by the employment of "Phantom Customer Inspectors".⁶

6. Witness John Chambers, former Atlantic lessee-dealer who testified in support of the complaint in this proceeding, received the following letter from his former Atlantic District Sales Manager on October 14, 1954:

"Dear John:

"Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

Since its adoption on April 1, 1953, the "Eleven Point Lease Letter" has been used by Atlantic to interpret and enforce Paragraph Three of dealer leases which, as noted, provides that " * * * the sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station * * * " thus the "Lease Letter" is an integral part of the lease itself. This is shown by the regularity with which Atlantic warns lessee-dealers in writing that their leases will be terminated if stated defaults with respect to the provisions of the "Eleven Point Lease Letter" are not remedied within fifteen days.'

1471 Prior to about August 1953, Atlantic's written agreements with its lessee-dealers also included an "Atlantic Franchise Agreement", providing for their purchase of motor fuels and automotive lubricants from their oil company lessor under stated terms and conditions. In recent years, only automotive lubricants have been covered by written purchase agreements between Atlantic and its lessees. Nevertheless, the facts of record clearly establish

"This is the kind of job which makes us all very happy and certainly is an important factor in running a profitable service station."

Witness Chambers' lease was subsequently terminated because he refused to go along with Atlantic's pricing policy and because he did not purchase sufficient quantities of sponsored TBA.

7. Here, for example, is a letter dated December 8, 1953 to dealer Michael J. Clifford, Baltimore, Maryland:

"1. From observations, we note that your regular hours of operation are such that we believe your market area is not being properly supplied.

"2. We also note from observations that inventories maintained in your station are not adequate to serve normal customer needs without delay."

(This dealer's lease was terminated January 4, 1954, for noncompliance with the above defaults.)

that Atlantic lessees purchase and resell Atlantic motor fuels exclusively.

Notwithstanding the economic power possessed by an oil company as a consequence of being both landlord and supplier to its lessee-dealer customers, the powers and responsibilities of an oil company's lessee-dealer" * * * satisf[y] all the requirements of an independent enterprise." *United States v. Richfield Oil Corp.*, 99 F. Supp. 280, 288 (1951) *aff'd*, 337 U. S. 922 (1952). Judge Yankwich's comments in the *Richfield* case as to the relationship of an oil company to its lessee-dealers apply with equal force to the instant case:

"Implicit in the contract is the lessee's assumption of obligation and responsibility for his own acts upon the premises and those of his employees in their relation to the public, who come in contact with them during the time of his dominion. The lessee is not the employee of Richfield. Richfield pays him no wages or other remuneration. He must carry his own workmen's compensation. He is not carried on their books as an employee for the purpose of social security taxes or any of the withholding taxes, state or federal, incidental to the employer-employee relationship. Richfield is not required to withhold any moneys from him for income tax purposes. Neither are they required to perform any of the duties just mentioned as to any of the employees who may assist the lessee in the conduct of the station or of any auxiliary repair work upon the premises. The lessee is solely responsible for his own conduct and that of his employees which may cause damage to the person or property of others." [99 F. Supp. at 288]

Contract Dealers. There were 3,044 contract dealers of Atlantic as of June 1956, and of this number about 50 percent operated service stations (as distinguished from grocery stores, garages, and similar outlets with gasoline

pumps on the premises). Non-service station outlets 1472 generally do not purchase and resell TBA products; all service station outlets however, are regarded as potential purchasers of TBA under Atlantic's agreements with Goodyear and Firestone.

Although contract dealers either own their own service station properties, or lease them from parties other than Atlantic, these dealers are subject to the control of Atlantic as a consequence of various contractual agreements between such dealers and Atlantic. Chief among these is an agreement having the following principal provisions:

"1. Equipment Loan. Atlantic, reserving the right of addition, change, substitution, and maintenance, lends to Buyer [the contract dealer] for the purpose of storage and sale of motor fuel purchased solely from Atlantic and for no other purpose, equipment that has been installed or which Atlantic may install, which shall remain personalty and the property of Atlantic, and which Buyer shall not remove, but shall repair and maintain as follows." [Lists equipment.]

"2. Sale and Delivery. Provides that the contract dealer shall buy a specified number of gallons of motor fuel annually from Atlantic; that deliveries will not exceed one-eighth of such gallonage monthly; that the contract dealer 'shall order and accept not less than one-twentieth of such annual gallonage in any calendar month'; and that the times, manner and quantities of delivery shall be in accordance with Atlantic's current practice."

The agreement further provides that all petroleum products delivered thereunder shall be paid for at prices established by Atlantic. The term of such agreement is generally for one year, and may be terminated by either party at the end of the original or any subsequent term by giving 60 days notice. Upon termination, Atlantic is entitled to repossess any equipment loaned to the dealer, with or with-

out legal process. If the agreement is cancelled by Atlantic because of breach by the dealer, the dealer must pay a fixed sum to Atlantic as reimbursement for cost of installation and removal of the equipment or, *at its option*, Atlantic may leave the equipment in place and require the dealer to pay a fixed sum for the value of the equipment and improvements. The equipment most frequently loaned (without charge) by Atlantic to contract dealers includes gasoline pumps, underground storage tanks, compressors, air towers, lifts, signs, outside lighting and poster frames.

1473 Both lessee-dealers and contract dealers have agreements with Atlantic relating to annual purchases of specified quantities of automotive lubricants, and to the terms upon which credit may be extended by these dealers to the approximately 160,000 holders of Atlantic credit cards.

Wholesale Distributors. This class of customers purchases refinery products from Atlantic for resale under the oil company's brand names. Wholesale distributors maintain bulk storage tanks capable of receiving truck deliveries of gasoline from Atlantic, and maintain their own delivery equipment for transporting such gasoline from their bulk storage tanks to retail customers, including service stations. There were 236 wholesale distributors of Atlantic products in 1956, who resold to 2,897 service stations, as shown by Table III:

Table III.

Numbers of Wholesale Distributors of Atlantic Refining Company, and Service Stations Supplied By Them In June 1956, By Marketing Regions.

Region	Distributors	Service Stations
New England	8	151
New York	39	238
Philadelphia-New Jersey	0	0
Eastern Pennsylvania	77	925
Western Pennsylvania	26	410
Southern	77	1,173
Grand Total	236	2,897

Atlantic had wholesale distributors in each of its six principal marketing regions in 1956, with the exception of the Philadelphia-New Jersey region. (There were 1,121 Atlantic service station outlets in the Philadelphia-New Jersey region in 1956, but all were supplied directly by the oil company.) These distributors accounted for 24 percent of total gasoline sales by Atlantic in each of the years 1951 and 1954. Eighty-seven percent of the 1474 2,897 service stations supplied by wholesale distributors of Atlantic in 1956 were in the Eastern Pennsylvania, Western Pennsylvania, and Southern regions; the remaining 13 percent were in the New England and New York regions.

Wholesale distributors are parties to the same type of sales contracts for automotive fuels and lubricants with Atlantic as are Atlantic's contract service station dealers. Moreover, Atlantic has the power to change the source of supply for service station dealers from Atlantic itself to wholesale distributors. During the period from April

1950 to June 30, 1956, Atlantic reassigned 53 contract service station dealers in the Wilmington, Delaware and Baltimore, Maryland sales districts from itself to particular wholesale distributors in those districts. Atlantic's use of the power to expand a wholesale distributor's retail market by adding to the number of service stations supplied by such distributor in order to induce such distributor to purchase and resell sponsored TBA to his service station customers was described by witness Lingenfelter, a salesman for Reading Batteries, Inc. (now the Reading Battery Division of the Electric Auto-Lite Company), who testified in support of the complaint.

The Issue of Coercion.

The complaint in this case charges that Atlantic has caused its various classes of dealers to purchase substantial quantities of Goodyear or Firestone TBA through the use of threats to terminate either their tenure as lessees (if lessee-dealers) or their petroleum supply and equipment loan contracts (if contract dealers). It is conceded by counsel supporting the complaint that when Atlantic adopted the sales commission system on March 1, 1951, all its dealers were informed by letter entitled "A Statement of Atlantic's TBA Policy" as follows:

"Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. *However, your acceptance or rejection of the program is a matter of your own choice.*" (Emphasis added.)

Notwithstanding this initial statement of policy by Atlantic, repeated periodically thereafter in form letters sent to its dealers, counsel supporting the complaint con-

tend that in practice this officially-proclaimed policy 1475 has been ignored by Atlantic and that in fact, Atlantic dealers have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA. This contention is supported by the testimony of former Atlantic dealers who appeared as witnesses and further reinforced by the testimony of witnesses representing many suppliers of TBA engaged in competition with Firestone and Goodyear, who testified that they encountered difficulty in selling TBA to Atlantic dealers because the latter group felt that they were required to purchase sponsored TBA and feared reprisal by Atlantic if they purchased non-sponsored items. Testimony of the competing TBA suppliers as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor v. Loewe*, 235 U. S. 522 (1915). This testimony was received not as proof of the facts recited, but for the purpose of showing the state of mind of the Atlantic dealers. Such testimony is competent to show that Atlantic dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone TBA.

Among the former Atlantic dealers who testified in support of the complaint, several recounted specific instances in which either express or implied threats of lease cancellation were made. Other ex-Atlantic dealers testified to incidents occurring during their tenure as Atlantic lessees which made it apparent to them that they were expected to handle either Goodyear or Firestone TBA, and that if they failed to purchase sufficient quantities of such TBA, that their relationship with Shell might be terminated.

Typical of the former Atlantic dealers testifying in support of the complaint was witness John Chambers, who

operated an Atlantic station in the Philadelphia area from 1945 until November 28, 1954. He gave this account of the events occurring when Atlantic changed over from the Lee-Exide program to the sales commission plan in 1951:

Q. Mr. Chambers, referring * * * to the dealer meeting when the switch-over to the Goodyear TBA line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?

A. No, there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

1476 Thereafter, witness Chambers commenced purchasing Goodyear TBA from the local Goodyear distributor to whom he had been assigned, a Mr. Parris. From time to time, however, he also purchased TBA products from other suppliers in his area. Among these were the following:

Chester Auto Parts
Chester, Pennsylvania

V. J. Auto Parts
Sharon Hill, Pennsylvania

C. A. Powers
Chester, Pennsylvania
(A Goodyear tire distributor)

Waxes and other
accessories

Accessories, including
"Barsleak", a radiator
sealer

Recapped tires, and also
some new Goodyear tires
and tubes

Witness Chambers testified that he was criticized by Atlantic salesmen for purchasing accessories from wholesalers other than Mr. Parris, his assigned supplier:

Q. Were any comments ever made by Atlantic representatives concerning your purchases of accessories from other than Ed Parris?

A. Yes.

Q. Would you please state some instances?

A. * * * the one that is greatest in my memory right

now was the Barsleak, * * * Joe Connelly was Atlantic [salesman] at that time, and Joe would pick it up and say, "What are you doing with this," and he would set it back down.

Q. Were any comments other than the one referred to, made by Atlantic representatives concerning the purchases of TBA from local jobbers other than Ed Parris?

A. Why yes, there was great criticism, shall I say, in reference to outside [i.e., non-sponsored] merchandise.

Q. Who made these criticisms?

1477 The Witness: Why salesmen who represented the company.

Q. Which company?

A. Atlantic.

Q. Where did these conversations take place between the Atlantic salesmen and you?

A. Many times over a cup of coffee and sometimes out in the driveway.

Q. Would it generally be a private conversation?

A. If it was to be of that private nature, yes.

Q. Well, when it was a criticism, was it generally of a private nature?

A. It was never done openly.

Subsequently, in November 1954, witness Chambers was notified that his lease would not be extended beyond December 31, 1954. He discussed this with Mr. Parris, his TBA supplier, who was also a former employer of witness Chambers:

Q. * * * what was the substance of your conversation with Mr. Parris?

A. I asked, "what in the world happened, what could I do." He said, "Jack, you have been turned in

by three [Atlantic] * * * salesmen for buying outside merchandise." I said "Who?" He said, "Connelly, Muldoon, and Petrison" turned me in for buying outside merchandise."

1478 The above testimony must be assessed in the light of that given by Mr. Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester, Pennsylvania. His company sells automotive parts, batteries and accessories (but no tires) at wholesale. Witness Wetzel gave this account of his conversation with witness Chambers:

Q. Do you recall any other conversations with other Atlantic dealers or Sinclair dealers, along similar lines?

A. Yes. John Chambers.

Q. Please state the time as nearly as you can, the place, and what was stated.

A. I would approximate the time as about 1953, possibly 1954. I wouldn't know exactly any more. But it was to the effect that he had to stop buying from me. He was told that he was buying too much on the outside from outside distributors, meaning V. J. Auto Parts and myself, which were specifically named.

Q. Now will you please state what the conversation was?

A. Jack said to me: "Glen, I am going to have to stop buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax." And two months later he got the ax.

Further testimony as to the state of mind of witness Chambers in 1953 and 1954 was given by witness Joseph

8. Atlantic regarded witness Chambers as an excellent service station operator, as is shown by the letter to him of October 14, 1954, quoted supra, note 6. This letter of commendation was received by witness Chambers just one month before he received notification that his lease would be terminated.

Marabella, a partner in the firm of V. J. Auto Parts Company, Folcroft, Pennsylvania. Mr. Marabella testified as follows:

Q. And did you solicit Bars Leak (sic) business from Mr. Chambers when he was an Atlantic lessee-dealer?

A. Yes sir.

1479

Q. And what was your experience with respect to the sale of Bars Leak to Mr. Chambers?

A. My, well, business relations and experience with Mr. Chambers had been the same as with other gentlemen I have mentioned, enjoying good business relations, good sales on Bars Leak, up until the time he was told to remove it from his shelf, * * *

Later, witness Marabella tried to sell Mansfield tires and tubes to witness Chambers and to another Atlantic dealer named Booz:

A. Well, in the latter part of 1954 with Mr. Booz, Elmer Booz, Wycombe Avenue and McDade Boulevard in Darby, I along with a Mansfield tire representative went in to solicit some of Mr. Booz' tire business. He said, "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Good-year tires and Goodyear tubes." And that was the extent of the conversation.

Q. Do you recall any other conversations with Atlantic dealers along similar lines?

A. Jack Chambers, we solicited him the same day at his station which was Clifton Avenue and Chester Pike in Sharon Hill, in his office, told us he was sorry to waste our time but more or less the same answer, that he couldn't put anything but Goodyear in there.

Documentary evidence taken from the files of Atlantic reveals the vigor with which Atlantic carried out its campaign to replace Lee tires and Exide batteries with Good-

year and Firestone TBA products. The minutes of 1480 a meeting of Atlantic's Regional TBA coordinators held on October 21, 1951, reveal that as of that date, "New England reported that approximately 98% of their accounts have been signed on a Goodyear program and that they are getting about 75% of the tire business they formerly enjoyed from these accounts. New York reported that they had about 96% of their accounts signed on a Goodyear program and that they were getting about 65% of their former tire business. * * *". By December 24, 1951, an Atlantic report showed that virtually all Atlantic dealers in Goodyear's assigned territory who were potential purchasers of TBA had signed contracts agreeing to handle Goodyear products.

Accompanying the campaign to sign Atlantic dealers to Goodyear contracts was a drive to install Goodyear signs and advertising materials in Atlantic stations throughout Goodyear's assigned marketing areas. This is an excerpt from a letter of July 30, 1951, from Atlantic's TBA sales manager, Mr. Heideman, to another Atlantic official:

"I asked Mr. O'Neill of the Goodyear Tire & Rubber Company to supply me with a list of the Atlantic dealers in the Philadelphia Region who refused to be identified on the Goodyear Program. Attached is a list of 46 dealers who, for reasons indicated, have refused this service.

"You will probably wish to review the respective portions of this list with the District Managers concerned. Undoubtedly, facilities for identification are not the best at some of these locations, but with the others it is apparent that the proprietors have not been sold on the Goodyear program. In such instances, I believe that additional sales effort is called for. In any event, would you be kind enough to advise me at your convenience what action you have taken with regard to this list."

Mr. Heideman followed this letter up himself on August 21, 1951, with a letter to Mr. S. A. Gaylord, Manager, Petroleum Sales Department, of Goodyear:

"I wonder if you can furnish me promptly with a report on the progress of the subject program. I should like to have this information broken down by our regional territories. As I understand it, the signs are being erected by Goodyear crews, but the decals are being erected by outside agencies. Furthermore, at the present time when we locate an Atlantic dealer who is without any Goodyear identification or without one or the other signs or decals, we do not know whether an unsuccessful attempt has been made to complete the assignment or whether all or part of the job, whatever the case may be, is scheduled for attention:

"We should like to interest ourselves in the cases where an unsuccessful attempt has been made to provide the Goodyear identification. Perhaps this information could be made available to us in simplest form by stating the Atlantic District areas that have been covered by either sign crews or agencies that are applying the decals, and by supplying us a list of the dealers where attempts to erect decals or signs were unsuccessful.

"I have already received a list of this type for the Philadelphia and South Jersey areas, and this has been referred to our District Managers for further attention. However, I do not know if this is a partial or complete list of the dealers in that territory who could not be identified with Goodyear signs."

Atlantic's "sales efforts" met with complete success, for the entire group of 46 recalcitrant dealers referred to in Mr. Heideman's letter of July 30 was thereafter signed to Goodyear contracts and Goodyear advertising signs were installed at their stations. The letter of complaint from Lee Rubber and Tire Corporation to Atlantic over the question of removal of Lee advertising signs from Atlantic

stations has already been referred to, supra at page 15. And on March 5, 1951, Mr. E. W. McCreery, another Lee vice president, stated in an intracompany memorandum referring to the Atlantic sales regions assigned to Firestone:

"In analyzing salesmen's reports on their calls on Atlantic accounts and with other information that we have, we are doubtful that many of the #2 type stations will stay on Lee tires. Because these stations are leased from Atlantic, some on a month-to-month basis, others on 90 days or longer basis, they are not in a position to take an independent stand and as a result will probably find it expedient to handle Firestone tires."

1402 In our opinion, the documentary evidence in this record—only a fraction of which is referred to above—and the testimony of the various representatives of suppliers of TBA competing with Goodyear and Firestone previously adverted to lend credence to the testimony of the ex-Atlantic dealers who gave evidence in support of the complaint in this proceeding. We affirm the hearing examiner's finding that agents of Atlantic have in fact coerced a substantial number of Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and that Atlantic has accepted the benefits of such coercion in the form of sales commissions.

Respondent Atlantic cites *United States v. J. I. Case Co.*, 101 F. Supp. 856 (D. C. Minn. 1951) as authority for the proposition that the hearing examiner erred in concluding that Atlantic has coerced a substantial number of its dealers in violation of Section 5 of the Federal Trade Commission Act. This District Court opinion is commonly regarded as a notable exception to the trend of decisions dealing with the subject of exclusive dealing.⁹ But we need not dwell on the Case decision, since the subject of coercive

9. Robinson, *Providing for Orderly Marketing of Goods*, 15 A.B.A. Antitrust Sec. 282, 308 (1959).

practices has received careful scrutiny from the Seventh Circuit and from the Supreme Court in a line of cases in the field of automotive financing. In *United States v. General Motors Corp.*, 121 F. 2d 376 (7th Cir. 1941), General Motors and its affiliates, General Motors Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Inc., appealed from a conviction of criminal conspiracy in violation of the Sherman Act. The indictment charged that these defendants had conspired to coerce franchised dealers of General Motors Corporation to finance their purchases and sales of automobiles through General Motors Acceptance Corporation. In affirming the criminal convictions, the court stated:

"The record leaves no doubt that the dealer body as a whole was made acutely aware and had knowledge of the set policy of the appellants with respect to the use of GMAC financing facilities. The fear of cancellation or refusal to renew contracts was great, so much so that the dealer was reluctant to refuse the terms and policies dictated by the appellants."

1483 Approving the trial judge's instructions to the jury in the *General Motors* case, the Supreme Court stated in *Ford Motor Co. v. United States*, 335 U. S. 303 at 316-317 (1948):

"* * * Their plain effect is to draw a line between such practices as cancellation of a dealer's contract, or refusal to renew it, or discrimination in the shipment of automobiles, as a means of influencing dealers to use GMAC, all of which falls within the common understanding of 'coercion,' and other practices for which 'persuasion,' 'exposition' or 'argument' are fair characterizations."

We are of the opinion that the record contains ample evidence to support the hearing examiner's finding that Atlantic has coerced and forced a substantial number of

its dealers to purchase sponsored TBA. However, we regard these overt acts of coercion as mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself. The more dramatic and immediate impact of this system, to be sure, is upon retail service-station dealers of Atlantic and other oil company dealers similarly situated. Their freedom to buy and sell as independent merchants is shown to be less complete in practice than in theory. Yet from the point of view of the anti-trust laws, it is the competitive effects of the sales commission system on competitors of Goodyear and Firestone which raise the most grave questions in this proceeding.

We turn, therefore, from an examination of the restrictive effects of the sales commission system upon service stations as buyers of TBA to an assessment of this system's impact upon wholesale and retail distributors 1484 of TBA engaged in competition with wholesale and retail distributors of Goodyear and Firestone. Preliminary to this inquiry, however, it will be helpful to have a more detailed understanding of the manner in which the sales commission plan enables Goodyear to integrate into its own nationwide distribution system the economic power possessed by Atlantic over its wholesale and retail petroleum outlets.

The Sales Commission Plan in Goodyear's System of Distribution.

Goodyear is the largest manufacturer of rubber products in the United States, with net sales of more than one billion dollars in 1954. The company has tire and tube factories located respectively in the states of Ohio, Alabama, Michigan, California and Kansas. There are 57 Goodyear warehouses across the land, and Goodyear tires, tubes and accessories are distributed to wholesale and retail distributors through these warehouses. Batteries, because of the

weight factor, are not warehoused by Goodyear except for emergency needs; all Goodyear wholesalers order "Goodyear" batteries directly from the factories of the two companies which produce "Goodyear" batteries under contract: Electric Auto-Lite Company and Gould-National Batteries, Inc.

Goodyear has approximately 500 company-owned and operate retail stores throughout the United States, and these stores also sell at wholesale. Apart from such company stores, there are more than 12,000 independent franchised stores selling Goodyear products at wholesale and retail and an unknown but very substantial number of firms not franchised by Goodyear but which purchase and resell Goodyear merchandise in the same manner as franchised Goodyear dealers. Franchised dealers are sometimes referred to as "direct" accounts, and non-franchised dealers in Goodyear merchandise are sometimes referred to as "indirect" or "associate" accounts.

All direct Goodyear accounts, which include independent franchised Goodyear dealers, wholesale petroleum distributors of Atlantic, and some retail petroleum dealers of Atlantic, execute a franchise agreement with the Goodyear Company itself, and purchase Goodyear products from the nearest Goodyear District Sales Office. Indirect, or associate Goodyear dealers do not have contracts with the Goodyear Company and do not purchase Goodyear TBA from the Goodyear District Sales Office. Instead, they usually execute a "Goodyear Associate Dealer Agreement" with the particular Goodyear wholesaler to which they are assigned. Such wholesaler may be either a company-owned store, a franchised independent dealer of Goodyear, an Atlantic wholesale petroleum distributor, or an Atlantic retail petroleum dealer. Indirect, or associate, dealers normally purchase from the wholesaler to which

they have been assigned, and normally pay higher prices for merchandise than do direct dealers of Goodyear.

Most service station customers, including Atlantic stations, are classified as indirect or associate dealers by Goodyear, although, as noted, some Atlantic stations are direct dealers of Goodyear and function as supply points to other Atlantic stations which are merely associate dealers. (The term "supply point" is used by respondents to refer to the local TBA supplier to which local Atlantic stations have been assigned.) A number of Atlantic wholesale distributors of petroleum products also function as supply points for Goodyear, and distribute TBA to the same retail stations which the wholesale distributors supply with Atlantic petroleum products. A supply point, then, is a local wholesaler of Goodyear TBA, although it may also be a retail dealer of Goodyear, a retail dealer of Atlantic, or a wholesale distributor of Atlantic as well. In the three marketing regions of Atlantic assigned to Firestone, the same classification of Atlantic dealers into direct and indirect accounts of Firestone is found as is described above with respect to Goodyear, and in all other material respects the sales commission plan between Atlantic and Firestone functions in substantially the same manner as does the sales commission plan between Atlantic and Goodyear described herein.

An integral part of the Goodyear-Atlantic and Firestone-Atlantic sales commission plans is the assignment or allocation of each Atlantic retail outlet to a specific supply point designated by Goodyear or Firestone. When a new Atlantic station is opened, or when a new dealer replaces a retiring operator, Atlantic reports to Goodyear (or to Firestone, as the case may be) the name and address of the new Atlantic dealer on an appropriate Goodyear (or Firestone) form. The Goodyear (or Firestone) District Manager then assigns this outlet to a specific supply point and

notifies the supply point and the Atlantic outlet of the assignment which has been made. No sales commission is paid to Atlantic unless the Atlantic outlet purchases from the designated supply point to which it has been assigned. In other words, even though an Atlantic dealer purchases

Firestone or Goodyear TBA exclusively, unless he 1486 buys from his assigned supply point, Atlantic receives no sales commission. One reason why Goodyear does not pay a sales commission when TBA merchandise is purchased by an oil company dealer from someone other than his assigned supply point was set forth in a letter dated December 19, 1951, addressed to an official of Shell Oil Company, and signed by the Baltimore District Manager of Goodyear:

"I am returning to you unsigned, two G-1209's which request that G. D. Armstrong Co., Inc., of Laytonsville, Md., be approved as a supplying dealer for Laurel Park Servicenter at Laurel Park, Md., and Bowie Shell Service at Bowie, Md.

"My reason for taking this attitude is the fact that we very definitely discourage our dealers from selling Goodyear tires outside of their authorized territory, and in servicing either Laurel or Bowie, the Armstrong Company are out of their territory.

"A situation of this kind, of course, presents us with a serious problem for, naturally, we are not in a position to dictate to any good dealer exactly where he may sell the merchandise which he purchases from us—all we can do is ask that they remain within the boundaries which we establish. However, in the case of oil company stations where we have already authorized and established an ample number of supply points, all with good service, we cannot pay the oil company in question a commission on merchandise delivered by a dealer who is operating outside of his territorial boundaries."

Although in some cases Atlantic dealers are assigned to more than one supply point of Goodyear, in none of Atlantic's marketing regions are Atlantic dealers assigned to supply points of both rubber companies. For, as has been shown, Atlantic's sales commission contract with Goodyear is confined to the company's New England, New York and Philadelphia-New Jersey sales regions, whereas Atlantic's sales commission contract with Firestone is operative only in the Eastern Pennsylvania, Western Pennsylvania and Southern sales regions of the oil company.

1487 A reporting technique has been established whereby Atlantic may determine the exact amount of sponsored TBA purchased by each Atlantic outlet from its assigned supply point or points each month. As both rubber companies use substantially the same reporting procedure, only the one used by Goodyear need be described in detail here.

Once every month each Goodyear supply point submits a report to the Goodyear District Sales Office for his district, showing his sales of TBA during the past month to each Atlantic outlet assigned to him.¹⁰ The Goodyear District Sales Office then compiles these reports into a master list, showing TBA purchases by each individual Atlantic dealer from his assigned supply point during the past month, and sends copies of this list to Atlantic and to Goodyear's home office in Akron, Ohio. Although these forms provide the basis for computation of sales commission accruing to Atlantic each month, they also afford Atlantic a means of de-

10. One exception is Atlantic service stations acting as supply points. A 7½ percent commission is paid by Goodyear to Atlantic on the net sales value of TBA purchases by these Atlantic supply point dealers, and, consequently, no further commission is paid by Goodyear on the resale of merchandise by such Atlantic supply points to other Atlantic stations supplied by them.

termining the volume of sponsored TBA purchases by individual Atlantic dealers during that time.

A different procedure is followed with respect to TBA purchases by wholesale distributors of Atlantic (including, as indicated by footnote 10, supra, Atlantic retail dealers functioning as supply points). Wholesale distributors purchase directly from the Goodyear or Firestone district offices, and then resell such TBA to their retail dealers. Some 2,897 Atlantic retail outlets were supplied by wholesale distributors in 1956. Atlantic receives a 7½ percent sales commission on the net sales value of all sponsored TBA purchased by wholesale distributors, but no additional sales commission is paid when such purchased TBA is resold to retail dealers supplied by the wholesale distributors.

Goodyear has sales commission contracts with a number of other marketing oil companies, and these agreements are in all material respects identical with the Goodyear-Atlantic contract. Total sales by Goodyear under its sales 1488 commission contracts with such other oil companies, including Shell Oil Company and D-X Sunray Oil Company, increased from about \$16,700,000 in 1951 to about \$36,105,000 in 1955, with sales commissions paid thereon by Goodyear increasing from approximately \$1,600,000 in 1951 to approximately \$3,300,000 in 1955. The evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA. Witness S. K. Osborn, for example, was a Sinclair dealer for 20 years, from May 1936 until May 1956. He was also a distributor of Firestone tires and could therefore purchase Firestone tires at lower prices than Goodyear tires. He testified that he stocked Firestone tires exclusively at his service station until 1948, at which time he was given a notice of lease cancellation:

A. It was a few days after I got the lease cancella-

tion. I was disturbed about it, and I wanted to find out what it was all about. I called up the company and finally got an interview with Mr. Weller, and Mr. McCauley [Sinclair officials] . . . I asked them why I was getting a lease cancellation. They told me that I wasn't doing the right things by them, that Goodyear tires, batteries and accessories were just as much Sinclair products, just as important to the company, as Betholine gas, Sinclair Gas, whatever they were marketing, and Opaline oil. And I promised to go along with their wishes. I gave them an order for Goodyear merchandise. In a few days I had a new lease.

Q. You say you gave them an order for Goodyear TBA merchandise. Do you recall the approximate amount of the order?

A. A thousand or more dollars worth.¹¹

In order to keep his service station lease, therefore, this Firestone distributor was placed in the anomalous position of having to purchase Goodyear TBA, a competing brand, in order to maintain his status as lessee of a Sinclair service station.

1489 Another former lessee-dealer, witness MacMasters, who operated a Sinclair station from 1944 until 1954, testified that he purchased Bowers batteries for resale at his station up to sometime in 1947 or 1948. At that time he was summoned to a conference with top-level Sinclair personnel at the oil company's offices:

A. We went into a conference room, some sort of conference room that had quite a large table. They put me on one side of the table, and the other three down the other side.

So, to make the conversation short, Mr. McCauley was in a hurry and he said, "We will make this brief, Mac. You are not buying batteries from us."

¹¹. In *Osborn v. Sinclair Refining Co.*, _____ F. 2d _____ (4th Cir. 1960), the Court of Appeals held that the facts recited above by witness Osborn constituted an unlawful tying contract violative of Section 1 of the Sherman Act.

I said, "No, Mac, I can't buy batteries from you. I owe an allegiance to Bowers because they took care of me during the war and immediately after the war, and I promised them if they would help me so I could remain in business satisfactorily, that I would see that they maintained and kept the business."

And his almost exact words were, "We don't give a good God damn who you think you owe, you are going to buy our [Goodyear] batteries or else."

And that was the end of the meeting.

Many other advantages accrue to Goodyear, and Firestone as well, as a consequence of their sales commission contracts with oil companies. A prime advantage is participation with each oil company's sales force in a number of joint merchandising programs. This advantage commences with the selection of persons to operate newly-opened service stations or to replace outgoing dealers in previously-operated stations. A continuing responsibility of Atlantic salesmen is to help newly-recruited dealers get established. Through these salesmen, the local Goodyear or Firestone supply points are notified of the names and addresses of new dealers before they actually take over operation of their stations and, as a result, before local competitors of Goodyear and Firestone in any community become aware of a new dealer's identity. This policy was implemented by a memorandum of April 25, 1952, by Atlantic's TBA Manager Heideman to Atlantic personnel:

1490 "Station Openings. We ask that you instruct your Districts to establish, as a regular practice, automatic and advance notice to the Goodyear District Office, of the openings of any new stations, or of change in proprietorship at any dealer location. Such notice will be mutually beneficial to both Goodyear and ourselves. It will enable Goodyear to complete any unfinished business with the outgoing dealer and, further, will enable them to anticipate and to move promptly in handling the new dealer's requirements."

The importance of advance notification is indicated by the fact that the initial stocking order of TBA costs approximately \$1,000—for large stations the amount may be much greater. And Atlantic's turnover of dealers is high. During 1955, 720 lessees of Atlantic ceased operation and had to be replaced, representing a turnover of about 29 percent of the oil company's total number of lessee-dealers in that year. Moreover, during the period March 1950 to June 1956, 389 new Atlantic stations commenced operations. Frequently these new or replacement dealers have recently completed Atlantic training schools in which Goodyear and Firestone TBA were used in demonstrations, and have already formed biases in favor of one or the other brand. However, the new dealer has no choice as to which of the two brands he will purchase and display—if his station is located in the three Sales Regions of the company in which Goodyear is sponsored, then he must take Goodyear TBA, and if his station is located in the three Sales Regions of Atlantic assigned to Firestone, then he must take the Firestone program.

Numerous other examples of joint merchandising programs favorable to the rubber companies having sales commission agreements with Atlantic could be cited. Although Atlantic officials stated in an intra-company memorandum shortly before the inception of the sales commission program that "Practically all sales promotional expense [will be] assumed by supplier [Goodyear]," Atlantic aggressively assists in carrying out the Goodyear program in various ways. For example, Atlantic salesmen obtain TBA orders from dealers and send them to local Goodyear supply points, recommend minimum Goodyear TBA inventories to dealers, coordinate special Goodyear promotional programs with radio, television, and other forms of advertising by the Atlantic company and its dealers, and assist dealers in arranging Goodyear TBA

display. Atlantic credit card facilities are also available to motorists wishing to purchase Goodyear TBA products from Atlantic stations. Without doubt, however, the most effective joint merchandising tactic is dual solicitation, or "double-teaming." This refers to the practice of an Atlantic salesman accompanying a Goodyear or Firestone salesman in calls upon service station operators to urge them to purchase sponsored TBA.

Goodyear's heavy reliance upon double-teaming to convert Atlantic dealers from the Lee-Exide program to Goodyear TBA was set forth in a "Confidential" memorandum of February 27, 1951, from Mr. S. A. Gaylord, manager of the rubber company's sales commission programs with oil companies, to Goodyear District Managers located within the three Atlantic Sales Regions assigned to Goodyear:

"You have been advised of the Sales Organization Meetings [between Goodyear and Atlantic sales personnel]. Mr. McConky [Goodyear Northeast Division Manager] will keynote for his Division. He will welcome the opportunity and pledge strong support and cooperation. No doubt he will stress the importance of Atlantic and Goodyear personnel getting acquainted and teaming up together when presenting the Goodyear franchise to Atlantic dealers. Because the Atlantic salesman has the 'in', but cannot be expected to know the Goodyear story at the start, so by team work the Goodyear Sales Representative will make the presentation and also assist in training the Atlantic Representative.

"Two purposes will be accomplished by this teaming activity—first the Atlantic salesman will learn the basic details of our Franchise Presentation and, secondly—our Goodyear salesman will be very favorably introduced to the account through the sales influence of the Atlantic Representative, also bring up this point with your men."

Thereafter, on August 7, 1951, a Goodyear official wrote to Atlantic's TBA Manager, Mr. Heideman:

"Having reviewed your letter of July 30th, I am pleased to outline below for your consideration steps that I suggest be followed in the handling of a new Atlantic Dealer on the Goodyear T.B.A. Program:

"1. Arrange for double team contact by the Goodyear and Atlantic salesman."

1492 Nine additional steps were outlined in this letter, of August 7, the fifth being to "Take stock order (Tires, Batteries and Accessories)" and the sixth being to "Furnish initial price lists, tires, batteries and accessories." Goodyear thus appeared confident that the presence of an Atlantic salesman together with the Goodyear representative would render unnecessary any higgling or haggling over price before obtaining an initial order for TBA from Atlantic dealers.

Similar confidence in the efficacy of double-teaming activity was expressed in a memorandum setting forth action to be taken to introduce the sales commission plan to Atlantic outlets in the three Sales Regions assigned to Firestone:

"Double-teaming activity with Firestone and oil company salesmen in then scheduled in order to sell the oil company's dealers on the Commission Plan."

Atlantic's Vice President, Mr. D. T. Colley, inaugurated the sales commission program on March 1, 1951, with the following letter to the oil company's sales force:

"I am sure that the new T.B.A. program which we have carefully selected has so many advantages that it will not be difficult to convince Atlantic dealers and distributors of its superior merit. This job is to be done with the use of all the sales equipment and knowledge that we, or our suppliers, have at our respective commands. *I expect the results of our salesmanship to be highly successful.*

"You can appreciate the fact that under no circumstances are our dealers to be made to feel that they must buy this new program just because they are Atlantic dealers. The sales you make must be made on the merits of the program and your ability to sell the dealers on its advantages to him. *Any evidence that coercion or misrepresentation were used in securing acceptance would be most embarrassing to our company.* This program is a challenger to your sales ability. I am confident that you will do a fine selling job." (emphasis added).

These quotations reflect the belief of Goodyear and Firestone, as well as Atlantic, that the presence of an Atlantic salesman is the almost indispensable ingredient 1493 needed to insure the success of the two rubber companies in selling their TBA products to Atlantic dealers under the sales commission plan. Perhaps one reason for this is that the annual evaluation by Atlantic salesmen of their respective lessee-dealers carries substantial weight with District Managers of Atlantic when the latter group make decisions as to extensions of dealers' leases for another year. Although respondent Atlantic has made vigorous efforts to create a record image of the typical Atlantic lessee-dealer as a stoutly independent businessman, able to close up shop as an Atlantic lessee on Saturday night and reopen down the street in a Sinclair or an Esso station the following Monday morning, the record as a whole suggests that this is a romanticized picture of a small businessman who is, more often than not, in a woefully weak bargaining position vis-a-vis his oil company lessor.

The typical lessee-dealer's dependence upon his lessor-supplier is explained by the following facts: The cost of constructing an average Atlantic service station is about \$50,000. Few men who become service station operators have this amount of money—many have as little as \$1,000,

and very few have as much as \$15,000. Most marketing oil companies, therefore, build a substantial portion of their own stations and lease them to operators. The lessee-dealer uses his own capital to purchase an initial inventory of petroleum products, TBA, and tools and for other expenses incurred in commencing operations. It is frequently necessary for incoming dealers to borrow several thousand dollars from Atlantic in order to purchase these initial stocks of goods. Nor is the income of the typical lessee-dealer sufficient to enable him eventually to purchase his own station. Although an exceptional dealer with an unusually high-gallorage station may earn as much as \$20,000 per year, the average annual net income of Atlantic dealers is in the range of 6 to 10 thousand dollars. But no matter how long an operator may remain as lessee, and no matter how much he strives to establish goodwill in his community, the time may come when his lease is not renewed—for any one of a number of reasons or for no reason at all except that the lessor would prefer to have someone else operate that particular station.

Many of the control devices available to Atlantic in its relationship with lessee-dealers are also applicable to contract dealers. Many of the latter are indebted to Atlantic, and most of them lease storage tanks, gasoline pumps 1494 and other equipment from their oil company supplier.

These equipment leases specify that such equipment may not be used for storage or sale of petroleum products purchased from any supplier other than Atlantic. And serious inconveniences would be caused for any contract dealer whose petroleum supply contract with Atlantic was not renewed from year to year.

Service station operators are understandably susceptible to the urgings and recommendations of their oil company suppliers and lessors in the matter of TBA. The Goodyear salesman encounters less buyer resistance on the part of

such a customer when an oil company salesman is standing nearby adding his endorsement to the sales presentation of the Goodyear representative. The technique of dual solicitation ("double-teaming") thus symbolizes in microcosm the competitive effects of the sales commission method of distributing TBA when introduced throughout the entire marketing area of a major oil company. It is to these macrocosmic effects that we now turn.

Competitive Effects of the Sales Commission Plan at the Manufacturing, Wholesale and Retail Levels.

A glance at Map I, supra, suffices to show that competition between Firestone and Goodyear in selling to Atlantic oil company accounts has been wrecked by the operation of the sales commission system. But other evidence of record is available in abundance to illustrate the same point. The following is an exchange of correspondence between Atlantic and Goodyear concerning the Republic Oil Company, a wholesale distributor of Atlantic products in Pittsburgh, Pennsylvania. (Atlantic's Western Pennsylvania sales region, it will be recalled, is assigned to Firestone.)

On August 2, 1951, Mr. E. C. Sauter, District Manager of Goodyear in Pittsburgh, addressed the following letter to Mr. F. W. McConky, Jr., Manager of Goodyear's Northeast Division:

"Republic Oil Co.

"This is a Pittsburgh concern who are acting as distributor of Atlantic products in parts of Pennsylvania and Northern West Virginia.

"The retail division of this company operates about seventy-five (75) service stations. They have never gone into a TBA program and at present have no tire hook-ups. They are in process, however, of trying to get a deal with one of the major tire companies and 1495 would like to entertain a proposition from Goodyear whereby we would sell their stations direct or through supplying dealers at a price which would be in line

with each outlet's volume with an override to the oil company.¹²

"Possibly we could use this additional distribution in the Pittsburgh area, particularly on passenger tires and tubes, so if you are interested possibly we should take the matter up with Petroleum Sales for their comments."

Thereafter, on August 3, 1951, the matter was referred by Mr. McConky to Mr. S. A. Gaylord of Goodyear in Akron:

"The attached from Eddie Saunter regarding Republic Oil and the possibility of their handling our products is a matter, in my opinion, for Akron decision, inasmuch as they [meaning Republic Oil] are distributors of Atlantic products.

"I don't want to spend any time lining up with these people if for example Atlantic-Philadelphia would prefer they handle Firestone, since this is the tire being handled by Atlantic in that area.

"Of course, I am not acquainted with the influence Atlantic might be able to bring to bear in forcing these people to a decision as to the line of tires that they—Atlantic—would like them to handle.

"At any rate, will you explore this from a management standpoint and advise so we can proceed according to Atlantic's desires."

On August 9, 1951, Mr. Gaylord addressed the following letter to Atlantic's TBA Manager, Mr. Heideman:

1496 "Mr. Saunter, our District Manager at Pittsburgh, and Mr. McConky, advises that subject account is

12. Many service station operators and TBA dealers use the term "override commission" or "overriding commission" in referring to payments by a TBA manufacturer to an oil company such as those made by Goodyear and Firestone to Atlantic. However, as respondents and their witnesses usually use the term "sales commission" to refer to such payments, we are using "sales commission" in this opinion.

considering marketing T. B. A. products and have invited us to submit a proposal.

"Before taking any action in the matter we felt that we should take the matter up with you for further guidance and your good counsel in the matter.

"Will appreciate hearing from you on this as soon as possible."

On August 14, 1951, Mr. Heideman replied to Mr. Gaylord under the heading "Republic Oil Company":

"Your note of August 9th has been received. Any overtures on your company's part to the subject could upset negotiations that we have underway at present. It was thoughtful of you to consult us and needless to say we appreciate it *as we will also appreciate your rejection of the invitation.*" (Emphasis added.)

Not only has competition between Goodyear and Firestone been eliminated as a result of these companies' sales commission contracts with Atlantic, but even *within* Atlantic's sales regions assigned to Goodyear, competition among Goodyear wholesalers for the business of Atlantic accounts has been eliminated through the assignment of each Atlantic account to a designated supply point. There are 1,155 independent franchised Goodyear dealers in the Atlantic marketing territories assigned to Goodyear, but only 128 of these dealers, or *11 percent*, are supply points for Atlantic dealers. The remainder, representing 89 percent of all Goodyear dealers in the three Atlantic sales regions, are substantially foreclosed from access to Atlantic accounts.

Nor is this anticompetitive allocation of customers by Goodyear among its wholesale distributors confined to Atlantic accounts alone—nine other oil companies have sales commission contracts with Goodyear, and as shown by Table IV, below, only a minute fraction of the total number of Goodyear dealers in any of these oil companies' marketing areas have been nominated as supply points for local oil company outlets:

1497

Table IV.

Goodyear Dealers Acting as Supply Points for Oil Company Outlets Compared with Total Number of Goodyear Dealers in Each Oil Company's Marketing Area.

Name of Oil Company	Total Number of Goodyear Dealers in Marketing Area	Number of Goodyear Supply Points
Anderson-Pritchard	3,825	28
Ashland & Subsidiaries	2,387	87
Carter	1,509	73
D-X Sunray	6,772	162
Quaker State	482	14
Richfield	1,691	3
Shamrock	1,717	25
Shell	10,756	679
Sinclair	10,963	10
Atlantic	1,155	128

The extent to which competition among Goodyear's own dealers at the wholesale level has been shattered by the operation of the sales commission plan may be inferred from the data in Table IV. In Shell's marketing area, for example, there are 10,756 Goodyear dealers; yet only 679 of these dealers have been appointed as supply points to Shell stations. In the marketing territory of D-X Sunray Oil Company there are 6,772 Goodyear dealers, but only 162 have been granted the privilege of becoming a supply point. And in Atlantic's New England, New York, and Philadelphia-New Jersey sales regions, only 128 out of 1,155 Goodyear distributors have been named as supply points.

To illustrate the elimination of competition among TBA wholesale dealers caused by the sales commission plan, evidence adduced in the course of hearings in Atlantic's Phila-

Philadelphia-Suburban Sales District (one of several sales districts comprising Atlantic's Philadelphia-New Jersey Sales Region) may be considered. As of June 30, 1956, there were 226 lessee dealers and 291 contract dealers of Atlantic in this district. These dealers were assigned to three Goodyear company stores and six independent franchised Goodyear distributors in the Philadelphia metropolitan area as follows:

1498

Table V.

Goodyear Supply Points in Atlantic's Philadelphia-Suburban Sales District and Atlantic Dealers Assigned to Them, 1956.

Supply Points	1955 Total Sales	No. Lessee Dealers*	No. Contract Dealers*
Goodyear District Office	\$ 43,845	2	6
Harvey W. George	239,906	45	49
F. C. Glenn	300,723	52	42
E. F. Miller	239,900	39	19
Frank Hagan	130,682	(54 dealers)**	
Ellwood E. Kieser	420,788	40	116
Edward Parris	160,100	(61 dealers)**	
Goodyear Store (Jenkintown)	None	2	4
Goodyear Store (Norristown)	None	8	1
	<u>\$1,535,944</u>		

* Includes some duplication due to 11 lessee dealers and 5 contract dealers having two alternate sources of supply.

** No breakdown is available as to the numbers of lessee and contract dealers, respectively, supplied by these two supply points. Mr. Hagan was supply point to a total of 54 lessee and contract dealers of Atlantic, and Mr. Parris to a total of 61 lessee and contract dealers of the oil company.

Witness Elmer H. Booz, for example, an Atlantic lessee dealer from 1952 until 1956, testified that Mr. Edward Parris was the designated Goodyear TBA supply point for dealers in his area. He stated that although he could have purchased Goodyear tires from other dealers at lower prices than from Mr. Parris, that he nevertheless obtained about 85 percent of his TBA requirements from Mr. Parris. One competing Goodyear dealer offered tires to Mr. Booz at a discount from list price of 40 percent plus 5 percent, plus 2 percent whereas Mr. Parris gave only a 10 percent discount, plus 2 percent discount for cash.

1499 As to competing brands of tires, Mr. Booz testified that he could make more profit on several such brands than he could on Goodyear tires. Lee tires were available at a discount from list price of 10 plus 10 plus 10 percent, plus 2 percent for cash. Moreover, the witness stated that he could never resell Goodyear tires at list price because "there is always someone from the Goodyear company or somebody else that is going to knock you down on it."¹³

Witness Francis J. Balloran commenced operating an Atlantic station in 1953 and was a contract dealer for Atlantic at the time he testified in this proceeding. He stated that after becoming an Atlantic dealer he purchased Goodyear TBA from his designated supplier, Mr. E. F. Miller (Table V, supra):

Q. Now, you stated that the Goodyear TBA was furnished by Mr. Miller?

A. That's right.

Q. Why did you buy your Goodyear TBA from Mr. Miller?

13. When Atlantic was considering adopting the Goodyear TBA program an intracompany memorandum recognized that Atlantic dealers would face " * * * a maximum amount of competition from established dealers and company stores, because it is reported that every county, marketing town and shopping center now has a Goodyear store or distributor."

A. Well, that was the setup by the Atlantic Refining Company when I first operated the business.

Q. Was it a matter of your own choice?

A. No, sir.

Q. Did you want to purchase TBA from Mr. Miller?

A. Not truthfully, no.

Q. Why didn't you?

A. Half the time when you called up you couldn't get it. Half the time you called up he didn't have it. If he did, you had to send a man with a truck and waste an hour and a half to go pick it up and bring it back.

1500 Q. Could you have purchased Goodyear tires at a cheaper price in the area?

A. Yes, sir.

Q. What was the name of the supplier?

A. Hires and Kocher.

Witness Balloran also testified that he occasionally purchased brands of tires other than Goodyear, but did not display them openly:

Q. Did you purchase U.S. tires from Harris and Leonard?

A. That's right.

Q. Were such tires advertised, U.S. tires?

A. Not out of my place they weren't.

Q. Where did you keep such tires?

A. Back on the racks, back on the oil racks where they couldn't be seen.

Q. Seen by whom?

A. Any of the Atlantic men that come in there, the bosses.

Q. Did you purchase Lee tires?

A. Yes, sir.

Q. And where did you keep them?

A. On the racks, sir.

Nineteen witnesses representing eleven TBA wholesale suppliers in the Philadelphia-Surburban District engaged in competition with one or more of the six Goodyear supply

points named in Table V, supra, testified in support 1501 of the complaint. Without exception, these witnesses gave evidence that they were able to sell little or no TBA products to Atlantic dealers in their areas, and that such Atlantic dealers had stated that they must purchase their TBA needs from one or more of the designated Good-year supply points listed in Table V.

Witness Michael T. Lanza, partner in the Philadelphia firm of Lanza Tire Service, stated that his company sells Goodyear and Firestone tires and tubes, as well as other brands, and also Exide batteries. He further stated that there are from 45 to 60 Atlantic service stations in his sales area, and that all such stations stock and advertise Goodyear tires and batteries. Witness Lanza identified Messrs. Fred Glenn and Harvey George as Goodyear TBA suppliers to Atlantic service stations in the North Philadelphia marketing area of Lanza Tire Service.

Witness Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester, Pa., testified that his company sells Willard batteries, Dayton Rubber Co. fan belts and radiator hose, AC, Purolator and Fram oil filters, and a wide assortment of automotive waxes, polishes and cleaners in competition with other sellers of TBA in his company's marketing area, including Mr. Edward Parris. Witness Wetzel stated that it is "rather futile" to attempt to sell automotive batteries to Atlantic dealers, and "very difficult" to sell automotive accessories to them. On cross-examination he was asked this question:

Q. Did I understand you to say that you don't sell any TBA items to Atlantic stations now?

A. Selling and buying are two different categories. They buy from me one or two filters to carry them over until Ed Parris can deliver them a case. They buy six or eight cans of merchandise to carry them over until Ed Parris can deliver a case or two cases or five cases, whatever the deal may be.

Witness Myer Duboff is an outside salesman for Lancaster Auto Supply Company of Philadelphia. This firm competes with Goodyear dealers Frank Hagan, E. F. Miller and Ellwood Kieser, *supra*, Table V. Witness Duboff testified that he had solicited the business of about 35 Atlantic stations in his area, all of which advertise Goodyear products " . . . right down the line." He stated that he 1502 had been told by a number of Atlantic dealers that they were unable to buy TBA items from him because they "must buy from the company." On cross-examination he was queried as to statements made to him by one Atlantic dealer:

Q. You mentioned one person, Mr. I. Mann, of Haverford and Brookhaven Road?

A. That is right.

Q. As having said something to you about inability to buy from you. I am not clear as to what he said.

A. Do you want me to state what he said to me. He said to me. "I can't buy from you."

Q. Had he been buying from you?

A. He was buying odds and ends and every time I come in to sell him, he would have to hide things, you would think it was the Gestapo or something. I would go in to see him and talk to him and he would say "Mike, I can't buy from you," and I said "Why not," and he says "They know what I am doing," and I didn't think that was right.

Many other examples of such testimony could be cited, not only by former Atlantic dealers and by TBA suppliers from the Philadelphia area, but from other marketing areas of Atlantic as well. These facts are clear: Atlantic has allocated three of its six marketing regions to Firestone and the other three to Goodyear. Firestone's sales to Atlantic outlets amounted to \$5,562,936 in 1955, the last full year for which data are available, and in the same year the rubber company paid commissions amounting to

\$506,199 to Atlantic. Goodyear's sales to Atlantic outlets amounted to \$5,700,121 in 1955 and its sales commission payments to the oil company totalled \$557,559.

We find that Atlantic has used its power as a major wholesale and retail distributor of gasoline distribution facilities to cause its dealers to purchase very substantial amounts of a different class of products, TBA. This finding, in conjunction with Atlantic's market position 1503 and the volume of TBA affected would appear to bring this case within the Supreme Court's ruling in *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1 (1958) and the more recent decision by the Fourth Circuit in *Osborn v. Sinclair Refining Co.*, _____ F. 2d _____ (4th Cir. 1960).

The Court held in the *Northern Pacific* case that tying arrangements are *per se* violative of Section 1 of the Sherman Act " . . . whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the tied product and a 'not insubstantial' amount of interstate commerce is affected." (356 U. S. at 6.) The content of the phrase "sufficient economic power" with respect to the tying product was defined by the Fourth Circuit recently in the *Osborn* case.

Osborn was a lessee of Sinclair Refining Company from 1936 to 1948, at which time his lease was terminated and a new lease entered into which was continued until May 1956, when it was finally cancelled by Sinclair. During the years of Osborn's tenure as a Sinclair dealer, the oil company or its subsidiary, Sherwood Bros., Inc., was party to a sales commission contract with Goodyear in all material respects identical to the Goodyear-Atlantic and the Firestone-Atlantic arrangements in the instant case. Osborn filed suit for treble damages under the Sherman Act, claiming that the sale of Goodyear TBA to Sinclair dealers in Maryland was in furtherance of an illegal restraint of trade.

On appeal, the court held that Sinclair had gone beyond mere salesmanship in inducing its dealers to carry substantial quantities of Goodyear TBA if they wished to continue selling Sinclair gasoline under their lease and sales agreements with Sinclair.¹⁴ As phrased by the court, quoting its own earlier decision in *McElhenny v. Western Auto Supply Co.*, 268 F. 2d 332, 338 (4th Cir. 1959):

"Probably nothing is more firmly settled in our anti-trust jurisprudence than that an illegal contract may be inferred from all the circumstances."

1504 • According to the court, Sinclair had violated Section 1 of the Sherman Act through a series of *implied* tie-in agreements with its dealers in Maryland. Moreover, the court did not regard it as significant that Sinclair had not required its dealers to purchase all their requirements of TBA from Goodyear:

"To insist upon such exclusivity in a tie-in would be inconsistent with the trend of decisions in this area. If a substantial amount of commerce is restricted by such arrangements, the standard for illegality would seem to have been met."

As to the requirement of "sufficient economic power" in the tying commodity—Sinclair's position in the petroleum retail market—the court found that in 1956, Sinclair had operated about 300 out of some 2300 retail service stations in Maryland and that those stations had sold about 10 percent of the total sale of gasoline in the same state in that year. This was held to afford Sinclair sufficient economic power in the gasoline market appreciably to restrain com-

14. Sinclair did not have a sales commission plan in effect throughout its entire marketing area, but only in Maryland and, to some extent, in adjacent states. F. 2d at Osborn, plaintiff in the case discussed above, testified in the instant proceeding as a witness in support of the complaint. •

merce in TBA. No one questioned the finding that Goodyear TBA purchased by Sinclair dealers in Maryland comprised a substantial amount of commerce. Accordingly, the implied tie-in agreements between Sinclair and its dealers were held to constitute a *per se* violation of the Sherman Act.

Here we find that Atlantic, which describes itself as "a large producer and distributor of petroleum products" whose operating revenue "totalled more than one half billion dollars" in 1954, distributes gasoline directly to more than 5,500 retail service stations and through wholesale distributors to more than 2,800 additional service stations in 17 states along the Atlantic Seaboard. Approximately 81 percent of Atlantic's total sales of gasoline in 1955 were accounted for by these approximately 8,300 retail service stations.

But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases. The issue here is the legality of respondents' use of a particular method of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring 1505 TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents.

The record of this case conclusively establishes, in our minds, that the sales commission contracts between Atlantic and Goodyear and Atlantic and Firestone have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels. Firestone dealers

are foreclosed from Atlantic outlets in regions assigned to Goodyear, and Goodyear dealers are foreclosed from Atlantic outlets in regions assigned to Firestone. Even within regions assigned to Goodyear, or to Firestone, only those Goodyear or Firestone dealers fortunate enough to be nominated as "supply points" have any prospect of sales to Atlantic dealers. Wholesale TBA dealers representing other tire manufacturers, for example United States Rubber Company, Lee Rubber and Tire Corporation, and Mansfield Tire and Rubber Company testified to their inability to sell tires to Atlantic service station dealers, except upon an occasional "pick-up" basis when a motorist demands a tire brand other than the locally-sponsored offering available at the station.

Battery manufacturers and certain accessory suppliers are, if possible, even more severely disadvantaged by the sales commission system than are tire companies competing with Firestone and Goodyear. Local wholesale distributors of Exide, Willard, Bowers and other brands of batteries testified to their inability to sell batteries to Atlantic stations except upon a pick-up basis. The most shocking feature of the sales commission system as to batteries, however, is the fact that the sales commission contracts with Atlantic enable Goodyear and Firestone to exclude *their own suppliers of batteries* from the wholesale and retail markets represented by Atlantic service station outlets. For the evidence of record indicates that Goodyear and Firestone both refused to execute sales agreements relating only to tires and tubes, but insisted that it include *all* TBA items sold by them or none. An analogous situation exists as to certain accessory products, for example, "Mac's" brand of polishes, waxes, and cleaners.

Moreover, as one of the chief characteristics of the sales commission plan is that it strengthens wholesale distributors of Goodyear and Firestone by pre-empting for their

benefit a substantial segment of all of the various local wholesale TBA markets in Atlantic's marketing area, 1506 the sales commission system stands as a bar to the expansion by smaller TBA manufacturers of their own distributive organizations. As respondents concede, a substantial proportion of all replacement TBA items sold to motorists are accounted for by service stations and "service stations, * * * constitute a large and increasingly important market" for TBA products. Thus, the competitive dislocations engendered by the sales commission plan at the wholesale level extend backward to the manufacturing level.

Finally, the unfair competitive advantages resulting from the sales commission plan are not confined to the manufacturing and wholesale levels—they extend forward to the retail level as well. Many of the wholesalers who testified in this proceeding also sell at retail, directly to motorists. To the extent, therefore, that suppliers of TBA competing with distributors of Goodyear and Firestone at the wholesale level are weakened by the operation of the sales commission system, the dealers are also weakened at the retail level, in instances where they are engaged in retail as well as wholesale operations.

Counsel for Atlantic contend, however, that no competitive consequences attend the sales commission plan which did not characterize the purchase-resale program employed by Atlantic prior to 1951. This point deserves consideration since it implies that no useful purpose would be served by outlawing the sales commission plan between Goodyear and Atlantic as Atlantic would merely return to the purchase-resale method of distributing TBA, with the result that Goodyear and Firestone dealers would lose a substantial volume of sales, but without improving the lot of competing TBA suppliers as they would still be unable to sell

TBA to Atlantic dealers. We believe this argument to be without merit for several reasons.

First of all, what course of action Atlantic may follow with respect to TBA if the sales commission plan is outlawed is entirely speculative. Assuming for the moment, however, that Atlantic will return to the purchase-resale plan and flout the antitrust laws by requiring its dealers to handle Atlantic TBA exclusively, or even substantially,¹⁵ it is obvious that local wholesalers of TBA competing with Firestone and Goodyear dealers in Atlantic's marketing area will at least no longer be laboring under the handicap of their competitors representing Firestone and Goodyear having already pre-empted a substantial share of the local wholesale TBA market. As the situation stands under the sales commission plan, local dealers representing Firestone and Goodyear are assured of a substantial chunk of the market before the competitive race at the wholesale level even begins. (See Table V., *supra*.) Abolition of the sales commission system will at least terminate the unjust advantage presently enjoyed by distributors of Firestone and Goodyear over local competitors representing other tire manufacturers and TBA suppliers.

Not only do the competitive effects of the sales commission plan differ from those of the purchase-resale plan at the wholesale level, but, at the manufacturing level as well. When Atlantic was considering changing from the purchase and resale of Lee tires and Exide batteries to some other method of merchandising TBA, it contacted several of the larger tire and rubber companies, including Goodyear, Firestone, The B. F. Goodrich Company, United States Rubber Company and General Tire and Rubber Company inquiring "... what interest you may have in

15. Cf., *Standard Oil Co. v. United States*, 337 U.S. 293 (1949); *Northern Pac. Ry Co. v. United States*, *supra*; *Osborn v. Sinclair Refining Co.*, *supra*; *United States v. Sun Oil Co.*, 176 F. Supp. 715 (E.D. Pa. 1959).

the sale of your tires and tubes through Atlantic accounts." Propositions were requested not only as to principal brands of these manufacturers, but as to secondary brands controlled by them and private brands as well. At the same time, Atlantic also contacted Mansfield Tire and Rubber Company and Lee Rubber and Tire Corporation soliciting proposals from them to furnish a private brand tire to Atlantic. This suggests that the smaller tire companies are able to compete with their smaller competitors in selling tires to oil company accounts on a purchase and resale basis. The evidence also shows, however, that the smaller tire companies are *unable* to compete with larger tire manufacturers for the business of oil companies using the sales commission plan *because the smaller tire companies lack distribution facilities which blanket the entire sales area of a major marketing oil company desiring to adopt the sales commission plan.* This was established by the testimony of Vice-President Colley of Atlantic, who appeared as a witness on behalf of this respondent.

A major oil company's decision to adopt the sales commission method of distributing TBA thus inaugurates a vicious cycle of injurious competitive effects: smaller 1508 tire and rubber companies are unable to compete in the first instance for the business of the oil company desiring to adopt a sales commission plan because they lack widespread distribution facilities at the wholesale and resale levels; and yet the operation of the sales commission plan stands as a bar to future expansion of the smaller tire companies' distributive systems since they are thereby foreclosed from a substantial segment of the wholesale and retail market *after* the oil company has adopted a sales commission plan offered by a larger tire company.

We believe that the sales commission method of distributing TBA presents a classic example of the use of economic power in one market (here, gasoline distribution)

to destroy competition in another market (TBA distribution). Other anticompetitive effects of the sales commission system are so obvious that they require no detailed consideration. The public suffers because it cannot rely upon competitive rivalry among local TBA wholesalers to insure that service station outlets will be able to obtain price savings which may be passed along to consumers. And, too, the system prevents the service station operator himself from using his buying power to further his own business advantage instead of that of his oil company supplier. As the Court of Appeals said in its recent *Osborn* decision, in a situation identical in its essentials with the present case, insofar as the service station dealer is concerned:

"Because of its financial interest in having its lessee-dealers sell Goodyear TBA rather than competing brands, Sherwood-Sinclair engaged in a course of conduct designed to bring about this result. The facts in this case utterly fail to reveal any business motive for the defendant's policy that its dealers should handle Goodyear products instead of others. Admittedly, it was proper for Sinclair-Sherwood to desire its lessees to carry a complete, high-quality line of TBA. It is conceded, however, that there are other competing brands, and there is no suggestion that Goodyear was superior to the other brands of TBA, or that there was any benefit to the dealers in handling Goodyear rather than one of the other lines."

1509 Several additional points are raised by Atlantic, but we believe only one of these requires detailed consideration in this opinion. Respondent contends that it was error, violative of due process of law, for the same hearing examiner to have presided over and rendered initial decisions in both this case and in Docket 6487, *The Firestone Tire & Rubber Company* and *Shell Oil Company*. The crux of the contention seems to be that the

hearing examiner could not possibly have rendered his initial decision in this case solely upon the basis of the record of the instant proceeding, since he also heard testimony and received evidence involving Atlantic's sales commission plan with Firestone in Docket 6487. As respondent puts it, "While Atlantic has the utmost respect for the Hearing Examiner's integrity and ability, Atlantic submits that he could not humanly exclude from consideration his impression of the witnesses' demeanor and credibility in the Firestone-Shell proceedings and that his decision against Atlantic based on impressions gained in those other proceedings is a violation of due process."

Our study of the initial decision and of the record in this case indicates that there is no basis for the claim that the hearing examiner considered extra-record evidence in making his findings of fact and conclusions of law. Substantial evidence is present in the record of this case to support every finding of fact and conclusion of law by the hearing examiner. In any event, our own independent study of the record herein is the basis for the findings of fact and conclusions of law set forth in this opinion.

Conclusion.

Other exceptions of respondents Atlantic and Goodyear have been considered and rejected. The appeal of respondent Atlantic is denied. The appeal of counsel supporting the complaint is granted in part and denied in part. The initial decision, to the extent that it is contrary to the views expressed in this opinion, will be modified to conform with such views. An appropriate order will be entered.

March 9, 1961

1445

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

Commissioners:

Earl W. Kintner, Chairman

Robert T. Secrest

Sigurd Anderson •

William C. Kern

FINAL ORDER.

Counsel supporting the complaint and respondent The Atlantic Refining Company having filed cross-appeals from the hearing examiner's initial decision in this proceeding; and

The Commission having considered said appeals, including the briefs and oral arguments of counsel and the entire record, and having rendered its opinion denying the appeal of respondent The Atlantic Refining Company and granting in part and denying in part the appeal of counsel supporting the complaint, and having determined that the initial decision should be modified in certain respects:

It Is Ordered that the findings and conclusions of the initial decision be, and they hereby are, modified and supplemented to conform with the findings, conclusions and views set forth in the accompanying opinion of the Commission

It Is Further Ordered that the following be, and it hereby is, substituted for the order contained in said initial decision:

It Is Ordered that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, or offering for sale, or sale and distribution

1446

Final Order.

of tires, inner tubes, batteries, and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect and contract, agreement or combination, express or implied, with The Goodyear Tire and Rubber Company, or The Goodyear Tire & Rubber Company, Inc., or with any other rubber company or tire manufacturer, or any other supplier of tires, batteries, and/or accessories, whereby The Atlantic Refining Company receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Atlantic petroleum products by any marketer or distributor of TBA products other than The Atlantic Refining Company;
2. Accepting or receiving anything of value from any manufacturer, distributor, wholesaler, or other vendor of TBA products, for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing, or promoting the sale of TBA products, directly or indirectly, by any such vendor to any wholesaler or retailer of Atlantic petroleum products;
3. Using or attempting to use any contractual or other device, such as, but not limited to, agreements, leases, training programs, promotions, dealer meetings, dealer discussions, service station identification, credit cards, and financial loans, to sponsor, recommend, urge, induce, or otherwise promote the sale of TBA products by and distributor or marketer of such products other than The Atlantic Refining Company to or through any wholesaler or retailer of Atlantic petroleum products;

4. Employing any method of inspecting, reporting, or surveillance or using or attempting to use, in any manner, its relationship with Atlantic outlets to sponsor, recommend, urge, induce, or otherwise promote the sale of any specified brand or brands of TBA products by any distributor or marketer of such products other than The Atlantic Refining Company to any wholesaler or retailer of Atlantic petroleum products;
- 1447 5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of Atlantic petroleum products to purchase any brand or brands of TBA products;
6. Preventing or attempting to prevent any wholesaler or retailer of Atlantic petroleum products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

It Is Further Ordered that respondents The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., (hereinafter collectively referred to as "Goodyear"), corporations, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Atlantic Refining Company or with any other marketing oil company whereby Goodyear, directly or indirectly, pays or contributes

- anything of value to any such marketing oil company in connection with the sale of TBA products by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;
2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Atlantic Refining Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;
- 1448 3. Reporting or participating in the reporting to The Atlantic Refining Company or any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

It Is Further Ordered that the initial decision as so modified and supplemented be, and it hereby is, adopted as the decision of the Commission.

It Is Further Ordered that respondents The Atlantic Refining Company, The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the aforesaid order to cease and desist.

By the Commission.

Robert M. Parrish,
Secretary.

(Seal)

Issued: March 9, 1961.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

The Atlantic Refining Company,
Petitioner.

vs.

Federal Trade Commission,
Respondent.

No. 13340.

PETITION FOR REVIEW OF CEASE AND DESIST
ORDER UNDER FEDERAL TRADE COMMISSION
ACT, SECTION 5.

To the Honorable Judges of the Court of Appeals for the
Seventh Circuit:

The Atlantic Refining Company ("Atlantic"), a Pennsylvania corporation having its principal office at 260 South Broad Street, Philadelphia, Pa. and carrying on business within the jurisdiction of this Court, by its attorneys, petitions the Court pursuant to Section 5(c) of the Federal Trade Commission Act for a review of the final order of the Federal Trade Commission In the Matter of The Good-year Tire & Rubber Company and The Atlantic Refining Company, Docket 6486, issued March 9, 1961, and served on Atlantic March 13, 1961.

Nature of the Proceedings.

1. This was one of three proceedings under Section 5 of the Federal Trade Commission Act, 15 USC § 45, brought concurrently in January of 1956. All three proceedings challenged the legality of sales commission agreements between tire manufacturers and oil companies under which the oil companies are paid commissions by the tire companies for promoting the sale of the tire companies' tires,

batteries and accessories ("TBA") to dealers and distributors selling the oil companies' gasoline.

2. The complaint in the instant proceeding was directed primarily at a sales commission agreement between The Goodyear Tire & Rubber Company, Inc. ("Goodyear") and Atlantic, under which Atlantic promotes Goodyear TBA in a portion of Atlantic's marketing area. The complaint also challenged (a) a similar agreement between Atlantic and The Firestone Tire & Rubber Company ("Firestone") covering the remainder of Atlantic's marketing area and (b) other sales commission agreements between Goodyear and other oil companies. The complaints in the other two proceedings named as respondents Firestone and Shell Oil Company (Docket 6487) and The B. F. Goodrich Company and The Texas Company (Docket 6485) and in each case challenged a sales commission agreement between the two respondents and all sales commission agreements between each respondent and other companies. Thus, the legality of the Firestone-Atlantic agreement was at issue in the Firestone-Shell case as well as in the Goodyear-Atlantic case.

3. The three TBA cases were assigned to the same hearing examiner. The examiner held separate hearings, received separate exhibits, and handed down a separate initial decision in each case. Regarding the legality of the Firestone-Atlantic contract, he heard some of the same and some different witnesses and received some of the same and some different exhibits in the Goodyear-Atlantic and Firestone-Shell proceedings.

4. In brief, the complaint charged: first, that Atlantic dealers and distributors are subject to Atlantic's control by virtue of the contracts and leases between them and because the dealers' economic welfare is dependent upon Atlantic; second, that Atlantic exercises this control by causing dealers to purchase a substantial quantity of TBA

from Goodyear and Firestone; and third, that many competitors of Goodyear and Firestone were unable to sell tires, batteries and accessories to Atlantic dealers because of the sales commission agreements. The examiner did not find that the dealers were subject to Atlantic's control or economically dependent upon Atlantic. He concluded that the provisions of Atlantic's dealer leases were not unreasonable or oppressive, that the sales commission payments to Atlantic were supported by substantial services, that the sales commission contract between Goodyear and Atlantic was not illegal, and that the complaint should be dismissed as to Goodyear. With respect to Atlantic, he further concluded that Atlantic representatives had coerced Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA and that Atlantic had accepted the benefit of such coercion. He held that such acts of coercion constituted unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act and that the charges of the complaint were sufficiently broad to sustain an order prohibiting overt acts of coercion. Accordingly, he entered an order which would, in effect, have prohibited Atlantic from forcing its dealers to buy Atlantic-sponsored TBA or to discontinue buying tires, batteries or accessories not sponsored by Atlantic.

Substantially similar orders were entered in the Firestone-Shell and Goodrich-Texas proceedings.

5. Appeals from the initial decision were filed by Commission counsel supporting the complaint and by Atlantic. Upon briefs and oral argument, the Commission entered a final order which would, in practical effect, prohibit Atlantic from continuing its sales commission contracts with Goodyear and Firestone and from entering into similar contracts with any other suppliers of tires, batteries and/or accessories. Specifically, the order prohibits Atlantic from

(1) entering into or continuing any agreement whereby Atlantic receives consideration in connection with the sale of TBA to Atlantic outlets by any marketer other than Atlantic itself;

(2) accepting any consideration from any TBA vendor for acting as sales agent or otherwise promoting the sale of TBA by such vendor to Atlantic outlets;

(3) using any contractual or other devices to promote the sale of TBA by any marketer other than Atlantic to Atlantic outlets;

(4) using in any manner its relationship with Atlantic outlets to promote the sale of any specified brand of TBA by any marketer other than Atlantic to Atlantic outlets.

The order also prohibits Atlantic from coercing Atlantic dealers or distributors to buy any brand of TBA and from preventing Atlantic dealers and distributors from handling TBA of their own independent choice.

Concurrently, the Commission entered a final order against Goodyear requiring Goodyear, in effect, to cease and desist from entering into or continuing any sales commission agreement with Atlantic or any other oil company.

Substantially similar orders were entered in the Firestone-Shell proceedings. The Goodrich-Texas proceedings were remanded to the hearing examiner for the taking of evidence as to competitive effects of the sales commission plan.

6. The opinion of the Commission accompanying the order in the instant proceeding affirmed the hearing examiner's finding that agents of Atlantic have coerced a substantial number of Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and that Atlantic has accepted the benefits of such coercion. The opinion also contained a finding that Atlantic has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gaso-

line distribution facilities to cause its dealers to purchase very substantial amounts of TBA, and the opinion said that this would appear to bring the case within decisions striking down tying arrangements as per se violations of the Sherman Act. The opinion concludes that the sales commission contracts between Atlantic and Goodyear and Atlantic and Firestone have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels.

Venue.

Section 5(c) of the Federal Trade Commission Act provides that any corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the Circuit Court of Appeals of the United States within any circuit where the method of competition or act or practice in question was used or where such corporation resides or carries on business by filing in the court within 60 days from the date of service of such order a written petition praying that the order of the Commission be set aside. Atlantic carries on business in the Seventh Circuit. It is licensed to transact business in the State of Illinois, maintains a sales office and warehouse in Chicago, Illinois, and sells substantial quantities of its products through such facilities to customers in Illinois and the other states in the Seventh Circuit.

Grounds for Relief.

1. The Commission's findings and conclusions and the Commission's order against Atlantic based thereon are unlawful in that, considering the whole record, there is no substantial evidence to support the Commission's findings as to (a) coercion; (b) Atlantic's economic power to control purchases of tires, batteries and accessories by Atlan-

tie outlets; (c) Atlantic's use of such power to cause Atlantic dealers to purchase substantial amounts of TBA; and (d) injury to competition.

2. The Commission's order is additionally unlawful in that Section 5 of the Federal Trade Commission Act does not, and under the provisions of the Constitution could not, authorize the Commission to prohibit Atlantic, as the Commission's order purports to do, from entering into or continuing sales commission arrangements with Goodyear, Firestone or other suppliers of tires, batteries or accessories, particularly where Atlantic acts "without the use of overt coercive tactics and of written or oral tying agreements."

3. The Commission's order is additionally unlawful in that it is arbitrary, capricious and constitutes an abuse of discretion in the following respects:

(a) it prohibits Atlantic from entering into sales commission contracts with suppliers of tires, batteries and/or accessories other than Goodyear and Firestone on the basis of evidence which, to the extent it was admitted against Atlantic, concerned only Goodyear and Firestone;

(b) it prohibits Atlantic from receiving any consideration for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products in the absence of any evidence tending to show that the receipt of such consideration is itself an unfair method of competition or an unfair act or practice or necessarily results in unfair methods of competition, acts or practices;

(c) it prohibits Atlantic from using any contractual or other device to sponsor, recommend, urge, induce or promote the sale of TBA products by a marketer other than Atlantic without limiting such prohibition to devices which constitute unfair methods of competition or unfair acts or practices;

(d) it prohibits Atlantic from using its relationship with Atlantic outlets to sponsor, recommend, urge, induce or otherwise promote the sale of any specified brand or brands of TBA products by any marketer other than Atlantic without limiting such prohibition to the use of the relationship in a manner constituting an unfair method of competition or unfair acts or practices.

4. The Commission's order is additionally unlawful in that it was issued without observance of procedure required by law in the following respects:

(a) the Commission's decision does not contain an adequate and proper statement of findings and conclusions as well as the reasons therefor on all material issues of fact and law as required by the Administrative Procedure Act; and

(b) the receipt by the same hearing examiner of different testimony and exhibits with regard to the legality of the Firestone-Atlantic contract in the instant proceeding and in the Firestone-Shell proceeding to which Atlantic was not a party violated the Administrative Procedure Act and the Fifth Amendment of the Constitution in that it denied Atlantic due process of law.

5. The Commission's order is additionally unlawful in that it is in excess of the jurisdiction and authority conferred upon the Commission by the Federal Trade Commission Act by reason of the fact that the acts and practices of Atlantic prohibited therein were not in interstate commerce.

*Petition for Review.***Relief Prayed.**

Wherefore, Atlantic prays this Honorable Court to set aside the order of the Commission, or, in the event the Court concludes that any portion of the order should be affirmed, to set aside the balance of the order and otherwise to modify the order accordingly.

Respectfully submitted,

Frederic L. Ballard, Jr.

Francis Ballard

Roy N. Freéd

Land Title Building

Philadelphia 10, Pa.

Roy W. Johns

William F. Stotz

Joel L. Carr

P. O. Box 7258

Philadelphia 1, Pa.

Timothy G. Lowry

Owen Rall

Herbert C. Loth, Jr.

135 South LaSalle Street

Chicago 3, Ill.

Attorneys for Petitioner

The Atlantic Refining Company

Of Counsel:

Ballard, Spahr, Andrews & Ingersoll

Land Title Building

Philadelphia 10, Pa.

Peterson, Lowry, Rall, Barber & Ross

135 South LaSalle Street

Chicago 3, Ill.

Dated: May 10, 1961.

1 **BEFORE THE FEDERAL TRADE COMMISSION.**
 • • (Caption—6486) • •

Room 332
Federal Trade Commission Bldg.
Washington, D.C.
Tuesday, October 30, 1956

Met, pursuant to agreement, at 1:00 p.m.

Before: Earl J. Kolb, Hearing Examiner.

Appearances:

James S. Kelaher, William J. Boyd, Jr., and Peter J. Dias, Attorneys for the Federal Trade Commission.

Thomas C. Mason, and David Ingraham, Attorneys for the Respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire and Rubber Company, Inc., Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York, N.Y.

Frederic L. Ballard, Jr., and Joseph K. Gordon, of Ballard, Spahr, Andrews & Ingersoll, attorneys for the Respondent, The Atlantic Refining Company, 1035 Land Title Building, Philadelphia 10, Penna.

2 **PROCEEDINGS.**

Hearing Examiner Kolb: This is the initial hearing in the matter of Goodyear Tire and Rubber Company and the Atlantic Refining Company, Docket 6486.

Mr. Kelaher: Mr. Examiner, to bring this matter up to date, I would like the record to show that pre-trial conferences were held on September 17, 1956, October 29, 1956 and the morning of October 30, 1956.

During the course of these pre-trial conferences and also as a result of informal discussions between counsel for the Respondents and counsel in support of the complaint, we have materially reduced the testimony to be adduced by counsel supporting the complaint.

During the course of the conferences and informal discussions we discussed three topics in general: (1) admissions (2) documents to be submitted by counsel in support of the complaint, and (3) possible stipulations as to the facts.

I would like to take this opportunity to commend the spirit with which counsel for the Respondents entered into these discussions. They have been very cooperative.

As the first order of business, I would like to hand to your Honor a copy of joint admissions of the Goodyear Tire and Rubber Company, the Goodyear Tire and Rubber Company, Inc., and the Atlantic Refining Company (handing) covering paragraphs 1 through 8 of the complaint as amended.

3 Hearing Examiner Kolb: Do you wish this to be read into the record and copied by the reporter?

Mr. Kelaher: Yes, your Honor.

Mr. Mason: No objection.

Mr. Ingraham: No objection.

Hearing Examiner Kolb: Will you copy this into the record, please?

(The document referred to is as follows:

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—6486) • •

Admissions of The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., The Atlantic Refining Company.

The Goodyear Tire & Rubber Company (hereinafter referred to as "Goodyear"), The Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as "Goodyear, Inc.") and The Atlantic Refining Company (hereinafter referred to as "Atlantic"), make the admissions set forth below solely for the purpose of this proceeding and for no other action, case or proceeding. The making of
4 these admissions is not a concession that the facts so admitted are relevant or material to this proceeding or that they establish a cause of action or basis for a proceeding under Section 5 of the Federal Trade Commission Act. Insofar as the admissions cover matters as to which any respondent denied knowledge in its answer, such respondent makes these admissions in reliance on the admissions of the other respondents.

1. Goodyear is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear operates its business directly and does business with several subsidiaries.

Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear Inc., is a wholly-owned subsidiary of Goodyear and sells products of Goodyear. Some of the principal officers of Goodyear are also officers of Goodyear, Inc. and the two companies share the same principal office and place of business.

Atlantic is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at
5 260 South Broad Street, Philadelphia, Pennsylvania

2. Goodyear is the largest manufacturer of rubber products in the United States, manufacturing a variety of rubber and associated products, including tires and inner tubes. The total net sales of Goodyear made directly and through its subsidiaries were more than one billion dollars in 1954.

Goodyear, Inc. sells various products manufactured by Goodyear, including tires and inner tubes. It also purchases for resale and distribution automotive batteries, parts and accessories and other items referred to by Goodyear as Car and Home Merchandise. Said products are sold directly to the consuming public by approximately 500 company-owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various states of the United States.

Automotive tires, inner tubes and batteries and certain automotive parts, accessories and supplies are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories.)

3. Atlantic is a large producer and distributor of petroleum products. Directly or through its wholly-owned or controlled subsidiaries, Atlantic is engaged in substantially all branches of the petroleum industry. It produces
6 crude oil from its wells, cracks and refines gasoline and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum retail dealers, some of whom operate service stations, and petroleum wholesalers (hereinafter referred to as "distributors"). In 1954 its sales and operating revenue totalled

more than one-half billion dollars. In certain cases, under a written contract (as amended) with Goodyear, Inc., Atlantic promotes the sale of certain TBA products and certain Car and Home Merchandise sold by Goodyear, Inc.

4. In the course and conduct of their businesses, Goodyear and Goodyear, Inc. ship certain products, including TBA products, or cause them to be shipped from the states in which said products are manufactured or warehoused to purchasers thereof located in other states of the United States and the District of Columbia.

In the course and conduct of its business, Atlantic ships some of its petroleum products from the states in which such products are manufactured, refined, stored or warehoused to terminals, bulk plants, or bulk storage located in other states for the purpose of sale and distribution to resellers and consumers in such other states.

5. Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and, as hereinafter more fully described, Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

6. Goodyear, Inc. sells TBA products directly and through wholesalers to many classes of customers, including service station operators who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They have constituted an increasingly important market for TBA products at the present time.

Atlantic sells its petroleum products to more than 5,600 retail dealers, a substantial number of whom operate service stations, and to distributors who in turn sell said products to more than 2,800 retail dealers, a substantial

number of whom operate service stations. In addition to petroleum products, a substantial number of the dealers sell TBA products.

7. Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to certain TBA products and certain Car and Home Merchandise, as to the terms of which reference is made to the contract itself and to the various amendments thereto. Atlantic has also entered into a contract containing generally similar terms with the Firestone Tire and Rubber Company (hereinafter referred to as "Firestone"). The respondents reserve the right to move to strike from the record this and all other references to Firestone contained herein and to object to the admission in evidence of any other testimony relating to Firestone.

There are a large number of dealers and distributors who sell principally Atlantic petroleum products. Under its sales commission contracts with Goodyear, Inc. and Firestone, Atlantic recommends, urges and endeavors to persuade some of these dealers and distributors in specified areas to purchase the products to which the aforesaid sales commission contracts relate and receives sales commissions in return for such services. Such urging, recommendation and persuasion is a factor which, with many other factors, causes some of these dealers and distributors to make purchases of products covered by the contracts. The dealers and distributors do not receive any part of commissions paid under the contracts.

The dealers and distributors selling the petroleum products of Atlantic operate as independently owned business enterprises. Atlantic has various contractual arrangements with said dealers and distributors as to which arrangements reference is made to the contracts themselves.

8. Goodyear, Inc. has sold TBA products and certain

9 Car and Home Merchandise to dealers and distributors selling petroleum products of Atlantic and has received valuable sales assistance from Atlantic in connection with such sales. Goodyear, Inc. made sales covered by its agreement with Atlantic, amounting to \$2,445,808 in 1951 and \$4,175,890 in 1952, on which it paid Atlantic commissions of \$239,250 and \$411,743 respectively.

Firestone reported sales covered by its agreement with Atlantic amounting to \$3,809,843 in its fiscal year 1952 and \$4,796,304 in its fiscal year 1953, on which it paid Atlantic commissions of \$354,354 and \$446,286 respectively.)

Mr. Kelaher: The second subject I would like to discuss relates to the documents to be marked for identification as submitted by counsel in support of the complaint. During the pre-trial conference yesterday and this morning, we prepared a list of identification numbers and descriptions of such documents and we move that that be incorporated into the record at this time.

I would like to call your Honor's attention to the fact that the first portion of that list has been transcribed and is now available, and the second portion of the list should be available for introduction into the record before this hearing is adjourned this afternoon.

I would also like to call your Honor's attention to 10 the fact that this list of documents and Commission exhibits for identification numbers has not been checked and is being offered subject to verification and possible minor changes in the descriptions.

Hearing Examiner Kolb: This does not show the items objected to or not objected to.

Mr. Kelaher: I was coming to that, Your Honor. I will now list the items broken down into the various categories.

Hearing Examiner Kolb: First I suppose we better have

the reporter mark the exhibits as directed in the pre-trial conference document, which will be copied into this present record to show the identification of the exhibits.

39 Mr. Kelaher: Your Honor, at this time I would like to offer in to evidence Commission's exhibits for identification which have been classified as to which respondents object, either in whole or in part because reference is made to the Firestone Tire and Rubber Company which is not named as a respondent in this case but which is referred to in the complaint as having an overriding sales commission agreement with respondent Atlantic.

Those documents, for the purpose of record are these Commission exhibits for identification numbers 103.

Hearing Examiner Kolb: 100 A-C and 103. Did I hear you wrong?

Mr. Kelaher: I'm sorry, 100 A-C, 103, 107 through 120, 135 A-C, 153 A-B, and 185, 186 and 187. Before the ruling is made on the admissibility of such documents I beg leave of the Examiner to be heard on the question of their admissibility.

Hearing Examiner Kolb: I assume that they will object. What their objections are they have a right to answer. Do you offer those exhibits now?

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: Do you want to state your objections?

Mr. Mason: We believe, your Honor, that these documents are in the same category of documents that were embraced in your Honor's ruling in the case involving Texas and Goodrich and Firestone. That is that

40 Firestone is not a respondent to the case that any detail of evidence with respect to the arrangement in Firestone has nothing to do with Goodyear in the case particularly and that it is outside of the scope of the complaint.

We have acquiesced in your Honor's ruling in the Texas-Goodrich case that evidence as to the contracts themselves and as to the basic statistics as to sales may go in but we have objected and registered our objections to those documents which set forth the detail of the Firestone plan and I am speaking now to my objection from the Goodyear people.

Mr. Ballard: Speaking for Atlantic, your Honor, I can add to Mr. Mason's statement, the fact is that Firestone is not a party, that the relationship between Firestone and Atlantic seems far alien to the relationship between Goodyear and Atlantic and we feel that evidence directed to the details of relationship between Firestone and Atlantic are a needless cluttering of the record and can lead only to confusion in your Honor's consideration of the issues before him which relate to another relationship and we also are prepared to acquiesce in the ruling in the Goodrich-Texas Company proceedings and in fact have in our admissions admitted the existence and general similarity of the Firestone-Atlantic contract and the size of the sales reported thereunder by Firestone and the size of the commissions paid thereunder.

41 Mr. Kelaher: Mr. Examiner, before I take each of the objections seriatim, I would like to review the complaint for the purpose of showing that these questioned documents are relevant to and come within the scope of the complaint.

The complaint alleges that the sales commission agreement and the acts and practices thereunder between Atlantic and Goodyear are unlawful. The complaint also alleges in paragraph 7 thereof that Atlantic has entered into a "substantially similar agreement", which counsel for respondents have just acknowledged, with Firestone, and that the agreement and the acts and practices thereunder are unlawful as set forth in paragraphs 11 and 12 of the complaint.

I would refer you to paragraph 11, subparagraph 2, which specifically states that among the effects of the adoption and use by respondents of said override commission agreement and each of them under the circumstances and in the manner here and as before alleged are that they have, as stated in subparagraph 2, "injured, lessened, prevented and destroyed competition between Goodyear, Inc., and Firestone."

If permitted, we propose to show documents which will substantiate that allegation of the complaint. Those documents will show that the Atlantic Refining Company has six marketing regions, three of which are designated as the New York Region, the New England Region, and the Philadelphia-New Jersey Region.

Three other Regions are described by Atlantic as 42 the Western Pennsylvania Region, the Eastern Pennsylvania Region, and the Southern Region. We propose to show that the sales commission plan agreements referred to in this complaint are market foreclosure devices. They are market devices which not only eliminate, they atomize competition. If permitted, we will show that Atlantic after exploring possible marketing alternatives actually assigned three marketing regions to Goodyear, namely the New York, New England and Philadelphia-New Jersey Regions, and actually assigned three Regions to Firestone, namely the Western Pennsylvania, Eastern Pennsylvania, and Southern Regions, both agreements to become effective simultaneously on March 1, 1951.

It is our contention that the control and influence which Atlantic has in this market is reflected in the manner in which they assign markets, and we contend that this plan, this sales commission plan, is simply that, is strictly a market control plan. We are not concerned here primarily with contracts between Atlantic and Goodyear. We are concerned here primarily with the dominant position

of Atlantic Refining Company in this market, and I would stress the point by stating that the Firestone contract, the Firestone statistics, and the Firestone mechanics, the operational mechanics of the Firestone plan will prove beyond a shadow of a doubt one important element of this case, and it is relevant to the Goodyear contract from that standpoint, and that important fact is that these tire
43 companies, Goodyear and Firestone, have actually entered into contracts in restraint of trade through the instrumentality of the Atlantic Refining Company, which are patently violations of Section 1 of the Sherman Act which bring them within the purview of Section 5 of the Federal Trade Commission Act.

That is the allegation we intend to substantiate and we feel we are severely restricted and hampered in our offers of proof and in our documentary proof if we are not permitted to introduce such evidence.

I would like to take the objections made seriatim by first Goodyear. They say Firestone is not a respondent. Well, that is true, Firestone is not a respondent, but it isn't necessary that Firestone be a respondent. This is a complaint in the public interest. The Commission has seen fit to attack this problem through this type of a complaint. It is for the protection of public rights. We are here interested in the elimination of trade restraints for eliminating the preservation of competition in the interests of the public. We are not interested in private rights. The Commission often has cases which transgress public rights and therefore contracts are abrogated or ruled invalid by the Federal Trade Commission and the courts. I refer your Honor to the National Licorice case 309 U. S. 350, where the Supreme Court stated that in proceedings before
the Federal Trade Commission, the order restraining
44 unfair methods of competition may preclude the performance of outstanding contracts by the offender.

Such orders have never been challenged because the owners of the contracts were not made parties, and that is exactly the situation in this case.

In addition to the fact that the Firestone contract and the actual practices thereunder including the entire plan eliminates competition, and that is another thing I would like to mention, it is true that the motivating force of this plan lies in the contracts. It sounds in contract to that extent. However, once the dealer is signed, once the Atlantic dealer is signed to a Firestone contract, or once he has signed a Goodyear contract, other trade restraints raise their ugly head. This plan is simply saturated with trade restraints, and we feel that we should have an opportunity to present evidence to substantiate that statement. For example, once an Atlantic dealer is signed to a Goodyear contract, and the same thing applies to the Firestone contract, the Atlantic dealer is told where he must buy his supplies, his Goodyear supplies or Firestone supplies. He can't go to any Goodyear dealer, even to a Goodyear dealer in the area or even to a Firestone dealer in the area, he must go to the designated supply point. This plan has all types of ramifications over and above the contracts themselves, and the contracts are very innocuous. There is one preliminary contract entered into by Atlantic and Goodyear which is dated in June, 1950, and it took 45 them six months to work out the terms of the contract. These contracts are very innocuous in their meaning, and we have proof of that statement. Those documents are already in evidence to show that. So that takes 46 care of the first point. Coming back again to Goodyear's objections we state it isn't necessary for Firestone to be named as a respondent.

The second objection by the Counsel for Goodyear was that the detailed arrangements have no bearing on the Goodyear-Atlantic plan. I think that I have covered that

subject thoroughly. We say that the detailed arrangements between Firestone and Atlantic do have an essential bearing on the Goodyear-Atlantic plan. There is no question about it. If it weren't for Atlantic's command of the market the Goodyear plan would not be in effect today, and I would like to add at this point that the contracts I am referring to between Goodyear and Atlantic and between Firestone and Atlantic were entered into as of March 1, 1951, and to this date there has been a complete elimination of competition between Goodyear and Firestone in attempts to sell the entire Atlantic market.

Firestone sells in areas in the New York area, Firestone sells in the New England area and Firestone sells in the Philadelphia-New Jersey area, but they do not sell to Atlantic stations in those areas. There is a hands-off policy and we can prove it and likewise Goodyear since 1951 sells in the Western Pennsylvania area, they sell in the Eastern Pennsylvania area, they sell in the Southern area, but they do not sell to Atlantic stations in those areas because there is a common understanding and an agree-
47 ment that Firestone has been assigned those areas.

Now we are not saying that this is a conspiracy case although it has all the elements of a conspiracy case, but we do think it is important to show that Atlantic has domination and control of the market. That is an essential and vital part of our case.

Now going down through other objections by Counsel for Goodyear he stated that he would acquiesce as to the contracts themselves and as to the statistics. Of course, that in and of itself shows nothing. As I stated the contract is very innocuous. The statistics taken as a whole are meaningless. We can't show; we are prohibited if our documents don't go in, we are prohibited from showing how this program operates and its effect on the Goodyear-Atlantic plan.

His further objection and his last objection was to the mechanics of the Firestone plan. Well, as I have just stated the trade restraints in this case are barely underway by the time the mechanics of this plan go into effect. There are all types of trade restraints involved here and we think we should have an opportunity to show how this plan works.

Now as to Counsel for respondent Atlantic, who has raised similar objections. First he states that respondent Firestone is not a respondent. I believe I have answered that contention. He states secondly that the relations between Firestone and Atlantic are foreign and alien to, 48 the Goodyear-Atlantic contract.

I think we have shown that they are not foreign and alien, they are an inseparable part of the Goodyear-Atlantic contract.

Third, it would lead to confusion. Of course I don't think I have to comment on that one. His fourth statement was that he acquiesced as to the contracts themselves and as to the statistics, and there again I say that it is not enough for our purposes. So on the basis of this statement I move the documents referred to be admitted in evidence.

Hearing Examiner Kolb: Mr. Kelaher, your chief objection as I understand it is an inability to show that there has been a division of territory.

Mr. Kelaher: It is our inability to show the dominance.

Hearing Examiner Kolb: I can't see how a ruling which I have made in the other case would prohibit you from showing a division of the territory, that Goodyear could not sell except in certain states.

Mr. Kelaher: Well, as we understand your ruling on the other case, and I am very happy to have that ruling clarified for the purpose of this case, I am assuming that that type of testimony would have been excluded. I would be very happy—

Hearing Examiner Kolb: I couldn't exclude testimony as to where Goodyear sells.

Mr. Kelaher: There is an exclusion of testimony
49 as to—referring now to the Goodrich-Texas Company case.

Hearing Examiner Kolb: I say if I follow the same ruling you would still be able in this case to show the territory or extent of the territory in which Goodyear sold and the division of the territory.

Mr. Kelaher: Yes, but we wouldn't be able to implement our allegation that competition has been eliminated. We have documentary proof going in to that question.

Hearing Examiner Kolb: The thing that bothers me is that you appear to be proceeding on a conspiracy case without pleading a conspiracy.

Mr. Kelaher: I tried to make it perfectly clear, Your Honor, that we are not proceeding on a conspiracy case. I simply make the statement that both contracts and the acts and practices under both contracts are essential to show the market domination and influence of Atlantic.

Atlantic simply assigns these areas to these people. We are attacking this sales commission plan. We say it is a market control device. It so happens that Goodyear is in now and Firestone is in. Tomorrow Atlantic may decide to put two other companies in there and we intend to show that they have that power.

Hearing Examiner Kolb: If Atlantic makes a contract with Firestone to sell in certain states and makes a contract with Goodyear to sell in certain states—

50 Mr. Kelaher: That is right.

Hearing Examiner Kolb: (Continuing.) —and you have no agreement among the three of them that the territory is being divided how are you going to prove a case against Goodyear by using Firestone?

Mr. Kelaher: We are going to show, as we allege in

the complaint, that the sales commission plan was entered into by Goodyear with the understanding that it was assigned three territories. We are going to show, if we are permitted, we have documentary proof of the fact that Goodyear does not go into the Firestone areas and vice versa. We say it is pertinent to show that the sales commission plan is a market control device.

It has a direct bearing on the Goodyear plan. One plan can't exist without the other. If this were not a market control device Firestone would be competing with Goodyear in the Goodyear territory and vice versa but they are not doing that.

Hearing Examiner Kolb: Do you have anything further to say?

Mr. Mason: No, Your Honor, except to say this, I think that Your Honor, in knowing the fact that this is not a conspiracy case, that there are not allegations of a division of territories between the three parties, has put your finger on the very nub of the problem here. The extent to which these people, the attorneys supporting the complaint, 51 would like to go into details of transactions with strangers so far as Goodyear is concerned is just going to completely confuse the case and take it out of what at least we understand it to be, an allegation that Goodyear and Atlantic together have participated in an unfair trade practice and that it is togetherness of their participation that makes this unfair trade practice.

Mr. Kelaher: The complaint also alleges, I might add, that Firestone and Atlantic are engaged in a similar unfair trade practice and one is part and parcel of the other.

Hearing Examiner Kolb: Would you consider this evidence as to Firestone to be admissible against Atlantic but not to Goodyear?

Mr. Kelaher: I would go that far. I think it is definitely admissible against Atlantic. I don't think there is any question about it being admissible against Atlantic.

Hearing Examiner Kolb: Where would you be if it was one and not the other?

Mr. Kelaher: It would show that the sales commission plan is what we claim it is. It is a market control plan. I think when you ask me whether I would hold it admissible against Goodyear it makes little difference whether it is admissible against Goodyear if the ultimate fact is found, namely that this is a market control device. It is a market allocation device. It is a customer allocation device. That is what we are attempting to reach in these cases.

52 I think it could be stated that it would be admissible against Atlantic and even with that limited applicability I think it would aid our presentation of the evidence. However, I would like to discuss that for a moment.

Hearing Examiner Kolb: I feel this way, this question has been raised and it is before the Commission now in the Goodrich case. If you feel that there is enough difference between this case and the Goodrich case to take it out of here perhaps the best way for me to do would be to refuse the acceptance of these documents and let you take another appeal at the same time, let them both be argued together.

Mr. Kelaher: We do contend, leave there be no misunderstanding on this point, that the basic issues are the same but we do think we have presented enough differences to show that the evidence we are referring to in this particular case would be admissible.

Hearing Examiner Kolb: I did have in mind deferring my decision until the Commission had acted upon the other appeal. However, if you wish to appeal this on that ground as well I can today sustain the objections and you can take your appeal to the Commission on this if you wish to do that. Whichever you wish.

Mr. Kelaher: Well, I would appreciate a ruling on the matter.

Hearing Examiner Kolb: All right then. Let the
53 record show that the objections to the exhibits which
were enumerated as applying to Firestone are sus-
tained.

Mr. Kelaher: May we have a five minute recess.

Hearing Examiner Kolb: Five minute recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Mr. Examiner, for purposes of the record,
we would appreciate an amplification of your ruling as it
pertains to this matter if you so desire.

Hearing Examiner Kolb: I don't see that any amplifica-
tion should be made really. The matter is before the
Commission in the other case and I would like to see what
the Commission does about it before I do anything as a
matter of fact. I am giving you an opportunity to appeal
this ruling if you feel the division of territory has any
bearing on it. I sustained the objection so that you could
take your appeal at the same time with the Goodrich matter
and have them both disposed of with the Commission.

Mr. Kelaher: I take it from your statement your ruling
in this matte. is based on your rulings in docket 6485.

Hearing Examiner Kolb: There is no use in me making
another ruling in the thing.

Mr. Kelaher: Thank you, Your Honor. There was
another category of documents marked for identification,
they being documents which relate to or incorporate,
54 they are in references to oil companies which have
sales commission plan agreements with respondent
Goodyear, Incorporated.

I ask now what your ruling would be with respect to
such documents which I now offer in evidence.

Mr. Mason: Your Honor, we object to the introduction
of these documents in evidence, objection that they present

precisely the same issues that were raised as to non-respondent oil companies in the Texas-Goodrich cases and because the issues are identical I will not engage in any extended argument in support of my objection.

Hearing Examiner Kolb: As I stated before, I might have some doubt as to Firestone but I have no doubt as to the inadmissibility of documents with reference to oil companies so I will sustain the objections to Exhibits 53, 55, 59 through 78.

Mr. Kelaher: I take it here again that your ruling is based on similar rulings in docket 6485.

Hearing Examiner Kolb: The matter is before the Commission and so I am leaving it before the Commission with the opportunity to appeal if you wish in this proceeding.

Mr. Kelaher: Thank you, Your Honor. I think that concludes the subjects as to which we had intended to discuss this afternoon. I leave it to Counsel for respondents whether or not there is anything further at this time.

Mr. Mason: We have no further business for Your Honor.

55 Mr. Kelaher: One more thing, Your Honor; for the record.

(Discussion off the record.)

Hearing Examiner Kolb: As a result of discussions off the record it was decided to have no further hearings until the Commission has decided the appeal and I am accordingly cancelling the hearings now set for November 7, 8, and 9, and November 12, 13, and 14, and resetting this matter for December 3 through December 7.

Mr. Kelaher: Your Honor; I would like to state that prior to the December 3 hearings Counsel for the respondent and Counsel for the complaint will attempt to resolve by stipulation the type of testimony elicited from top level officials in docket 6485.

Mr. Mason: We will do that.

Hearing Examiner Kolb: I have no objection to expediting the case any way you can.

Mr. Kelaher: Thank you.

Hearing Examiner Kolb: I guess that is all in this case.

87

Room 112,

U. S. Customs House and Appraisers Bldg.,

2nd and Chestnut Streets,

Philadelphia, Pa.,

Thursday, June 13, 1957.

Met, pursuant to notice, at 10:30 a.m.

Before Earl J. Kolb, Hearing Examiner.

Appearances:

James S. Kelaher, and Peter J. Dias, Attorneys for the Federal Trade Commission.

Thomas C. Mason and David Ingraham, Attorneys for the Respondents, the Goodyear Tire & Rubber Company and the Goodyear Tire & Rubber Company, Inc., Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York, N. Y.

Charles I. Thompson and Frederic L. Ballard, Attorneys for the Respondent, The Atlantic Refining Company, 1035 Land Title Building, Philadelphia 10, Pa.

Following Testimony Taken At Philadelphia

88 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: At this time I would like to offer into evidence map entitled "Atlantic Philadelphia Metropolitan and Suburban District," with Commission exhibit number to be assigned tomorrow.

Hearing Examiner Kolb: You wish to question the witnesses on that?

Mr. Kelaher: Yes, your Honor.

Hearing Examiner Kolb: Is there any objection to that?

Mr. Thompson: No objection, sir.

Mr. Kelaher: I would like to call John Chambers to the stand.

Mr. Thompson: Mr. Examiner, for the convenience of you, sir, and counsel, we have had this map of the Philadelphia Suburban District blown up, and you will see an enlarged edition of it on the wall. I thought it might be a help to everybody.

Hearing Examiner Kolb: Very well.

JOHN CHAMBERS, was thereupon called as a witness for the Commission, and, having been first duly sworn,
89 testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name?

A. John Chambers.

Q. Your home address?

A. 14 Sycamore Avenue, Alden, Delaware County, Pennsylvania.

Q. Mr. Chambers, were you at one time employed in an Atlantic service station?

A. I was.

Q. Will you please state the period during which you were employed and by whom, and with whom?

A. Well, I would say from the latter part of '45 until the latter part of '48 with Ed Parris.

Q. Where was his station located?

A. Chester Pike and Clifton Avenue, Sharon Hill.

Q. After your employment with Mr. Parris, what was your next occupation?

A. Then I became a dealer at 2nd and Lloyd, Chester.

Q. What kind of a dealer did you become?

A. A lessee dealer.

Q. During what period did you operate the station at 2nd and Lloyd Streets?

A. From November of '48 until November of '52.

90 Q. And what type lease or what was the term of your lease during that period?

A. Yearly.

Q. Then in November of 1952 what transpired?

A. I moved to the location at Chester Pike and Clifton Avenue, Sharon Hill.

Q. And during what period were you at that location?

A. From November of 1952 until November of 1954.

Q. And what type station was that?

A. Lessee.

Q. Was it an Atlantic station?

A. That is right.

Q. And what was the term of your lease during the period when you were at the Sharon Hill station?

A. Three to six months.

Q. Is that renewable every three months?

A. Yes.

91 Q. Mr. Chambers, just to clear the record, during the period 1945 on or during the period when you were employed, were you with an Atlantic station?

A. Oh, yes, sir.

Q. And during the period of your first lease was that at an Atlantic station?

A. That is right.

Q. When you began operating as a lessee dealer in November of 1948, what TBA did you carry in your station?

A. Lee and Exide tires.

Q. You mean Exide batteries?

A. Exide batteries, I meant, and much of my TBA was outside jobbers.

Q. Your accessories were from local jobbers?

A. That is right.

Q. How long did you continue to carry these tires and Exide batteries and the line of accessories you were handling?

A. Until the change was made.

92 Q. And do you recall the events leading up to the change you referred to?

A. No, I don't recall anything other than came about.

Q. At or about what time did the change take effect?

A. I could not be exact on that.

Q. And what was the change, what was the change you are referring to?

A. The change was from Lee tires, of course, Exide batteries, to a 100 percent Goodyear.

Q. Was Goodyear a 100 percent Goodyear TBA?

A. Everything.

Q. What was included in that line, Goodyear tires?

A. Batteries, fan belts and the accessories that goes along.

Q. Did you in or about March of '51 attend a meeting of Atlantic dealers?

A. Oh, yes.

Q. What was the purpose of the meeting?

A. Well, to inform us the company was making that change and they felt it was better for the entire industry, that is, our service station business.

Q. When you say the company, to whom are you referring?

A. Whoever was handling the meeting at that time, I don't recall.

Q. What Whiz brand line? What constitutes the Whiz brand line?

A. Very comparable to your Dupont or your Mac's-It line, or Simchiz line. It constitutes polishes, cleaners, radiator specialties, sealers, et cetera.

Q. Would you state your company's experience with respect to the Whiz line of waxes and polishes among 194 Atlantic and Southern stations particularly?

A. Well, when you have salesmen working on commission, you have to have something that they can sell. So finding that the Mac's-It line was drifting away for us, there was only one solution, to find something else to sell it and try to have it exclusively, which we did.

We took on the Hollingshead line and tried to replace wherever we could the Mac's-It line within the operations that were then using Mac's-It. They had originally been Dupont. We changed them from Dupont to Mac's on a selling basis. Now we had to unsell what we had sold and sell the Whiz, which we proceeded to do. We built that up to very comparable figures to our Mac's-It line.

Q. Comparable figures? Will you state approximately what your annual purchases were built up to?

A. In the vicinity of \$6,000. Somewhere between \$5,000 and \$7,000 annual purchases.

Q. What was your general mark-up on the Whiz line?

A. The same as on the Mac's-It—20 percent.

Q. So a \$6,000 volume would be a \$7,200 selling volume?

A. Yes, sir.

Q. Who were your principal purchasers of the Whiz line?

A. Our previous purchasers of the Mac's-It line.

Q. And then were your previous purchasers of the Mac's-It line—did they continue to purchase Mac's-It products?

195 A. We replaced them pretty completely. It took about a year or a year and a half, but we pretty well replaced them.

Q. What was your experience with respect to the Whiz line? Would you please state the years you are speaking of?

A. We began with Whiz, I would say, in late 1951 or probably early 1952, and the build-up period was probably the same length of time, a year or a year and a half. So we probably peaked out somewhere around late 1953 or '54 on our Whiz products.

Q. Would you please state your experience with respect to the Whiz line in so far as it relates to the Atlantic market?

A. There again the product was available to the TBA distributor, or whatever they wished to call that individual, through Goodyear, and our sales were again replaced. In other words, the repeat business was lost to us and picked up by the TBA distributor.

Q. Was that repeat business picked up on the Whiz line or on another line?

A. It was picked up on the Whiz line.

Q. Which was handled by Mr. Parris?

A. Yes.

Q. Did you lose any of the business of the Atlantic or Sinclair service stations on the Whiz line?

196 A. Yes, sir.

Q. You did?

A. Yes.

Q. Can you give us the names of the Atlantic dealers to whom that business was lost?

A. Exactly the same group.

Q. The same group—

A. In other words, it was a repetition of the Mac's-It development and loss.

Q. Can you give us the names—and by “the same group” you are referring to the names you previously stated with respect to the Mac's-It line?

A. Yes. Probably with the exceptions of where dealers had either moved or been replaced by other dealers. But they were the same locations.

Q. Can you tell me whether your purchases and sales of the Whiz line declined from that peak period you 197 referred to, late 1953 or '54?

A. Yes, sir, it has. My purchases this past year on Whiz were below \$500.

Q. Were the bulk of your sales of this line to Atlantic and ~~Sinclair~~ stations as previously?

A. Yes.

Q. Do you recall any conversations with Atlantic dealers relating to your loss of business on the Mac's-It or Whiz lines?

A. Yes.

Q. Would you please state the names of the individuals with whom you had such discussions, and the approximate time?

198 By Mr. Kelaher:

Q. Would you state—

Mr. Thompson: May we have the question reread?

Hearnig Examiner Kolb: Yes.

(Read.)

By Mr. Kelaher:

Q. You may answer that.

A. Burt Rehill; 1952.

Q. For purposes of convenience, I think it would be

just as well if you gave us the substance of the conversation as you went along. Would you state what reason Mr. Rehill gave you at that time?

Mr. Mason: I object to the form of the question. If he wants to have what he said, all right. But let's have no characterizations.

Mr. Kelaher: That is exactly what I am asking him.

Mr. Mason: That is not what you asked him.

Mr. Thompson: Will you accept the amendment?

Mr. Kelaher: I will accept the amendment.

By Mr. Kelaher:

Q. Just state the conversation.

A. The conversation was to this effect—

Mr. Thompson: May we have the place where it occurred?

199 Mr. Kelaher: Yes.

A. In his place of business. "Sorry, Glenn, but I have to reserve this for Ed Parris. You understand the situation. I am in an Atlantic station. I must buy from an Atlantic TBA distributor."

By Mr. Kelaher:

Q. Do you recall any other conversations with other Atlantic dealers or ~~Sinclair~~ dealers, along similar lines?

A. Yes. John Chambers.

Q. Please state the time as nearly as you can, the place, and what was stated.

A. I would approximate the time at about 1953, possibly 1954. I wouldn't know exactly any more. But it was to the effect that he had to stop buying from me. He was told that he was buying too much on the outside from outside distributors, meaning V. J. Auto Parts and myself, which were specifically named.

Mr. Mason: I would like to have the answer read.

(Read.)

Mr. Mason: I move to strike everything in that answer after "it was to the effect" because it is not clear from the answer whether he is reciting a conversation that actually took place, a speculation of his as to a conversation that may have taken place somewhere else, or what.

Mr. Kelaher: He is referring specifically to a conversation.

Mr. Mason: You heard the answer read.

Hearing Examiner Kolb: Are you describing a conversation that you had?

The Witness: I am describing a conversation that I had.

By Mr. Kelaher:

Q. What did Mr. Chambers—

Mr. Mason: I object to the description. It starts with "to the effect". It does not purport to be a conversation at all but the impression of the witness.

By Mr. Kelaher:

Q. State as nearly as you can what Mr. Chambers said to you.

Mr. Thompson: Before he answers that question; I think the record is becoming confused again. It is my understanding that you are still referring to the Whiz line?

The Witness: Yes.

Mr. Thompson: And this conversation was about the Whiz line?

The Witness: Let's call it the chemical line.

By Mr. Kelaher:

Q. The chemical line, which would include Mac's-It, Whiz, and so on.

A. That's right, because Jack was still using some Mac's-It at that time.

Mr. Thompson: I am thoroughly confused.

Mr. Kelaheer: Your Honor, I think I should be permitted to conduct this examination. I am trying to get the substance of the conversation that he had with Mr. Chambers some time in 1954.

Mr. Thompson: I am merely trying to find the subject matter of the conversation.

Mr. Kelaheer: I think we will develop it.

Hearing Examiner Kolb: Go ahead.

The Witness: The subject matter was TBA products generally, exclusive of tires.

By Mr. Kelaheer:

Q. Now will you please state what the conversation was?

A. Jack said to me: "Glenn, I am going to have to stop buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax." And two months later he got the ax.

Mr. Thompson: I move the answer be stricken. It obviously is double hearsay. The man is saying what one Jack Chambers said to him what somebody in Atlantic said to him.

Hearing Examiner Kolb: He is explaining his reasons why he can't buy that product. I think the answer is admissible. I will overrule the objection.

202 By Mr. Kelaheer:

Q. At that time did you make any remarks to Mr. Chambers? Do you recall whether you answered him?

A. None that I can recall.

Mr. Thompson: May I ask whether it is the purpose of this testimony to impeach Mr. Chambers, who testified that he had no TBA difficulties whatever with Atlantic?

Mr. Kelaheer: He did. I believe you were listening to different witness this morning.

Mr. Thompson: Is it the purpose to impeach Mr. Chambers?

Mr. Kelaher: It definitely is not. It is to corroborate Mr. Chambers.

By Mr. Kelaher:

Q. Now getting back to Mr. Burt Rehill, will you state what that discussion related to?

A. TBA products, exclusive of batteries or tires.

Mr. Thompson: The TBA products exclusive of tires and batteries? And accessories?

The Witness: I have batteries, but I wasn't discussing batteries with him. I do not have tires for sale.

By Mr. Kelaher: .

Q. You say batteries and accessories, including the Mac's-It and Whiz lines and your other products. Did you sell your line in general to Atlantic and Sinclair stations prior to about 1951?

A. Did I sell?

203 Q. Did you sell them?

A. Yes, sir.

Q. What was your approximate volume of sales to those stations at that time?

A. I couldn't give you that figure without going back into the sales record.

Q. Since that time have you lost business to Atlantic and Sinclair dealers?

Mr. Mason: I object to the question such as that. He has already announced that he doesn't know what his figures are and can't give them from his head for a prior period.

Hearing Examiner Kolb: He doesn't know what he sold. He might be able to say what he lost. Objection overruled.

Mr. Mason: If he had his figures here, we would know what the facts were.

By Mr. Kelaher:

Q. I will restate the question. Taking your 1951 sales volume as 100 percent, did you increase, decrease, or remain constant with respect to your volume of sales of batteries and accessories to Atlantic and ~~Sinclair~~ dealers?

A. Sales to service stations are definitely down. That

I can vouch for, because I know what has given rise 204 to existing sales at the present time, because I analyze those things myself. I want to know where I am selling my merchandise. And I know that I am not selling it to service stations in general.

Q. Does that include Atlantic and ~~Sinclair~~ service stations?

A. Yes, sir.

Q. Would you say then that there has been a decrease in sales volume since the peak period, or since the 1951 or 1950 level?

A. To service stations?

Q. Yes.

A. Yes.

Q. To Atlantic and ~~Sinclair~~ service stations.

Would you have any approximate idea of the percentage of decline since that time?

Mr. Mason: I object to an approximate idea.

Hearing Examiner Kolb: Objection overruled.

A. Service stations, 80 percent decrease.

By Mr. Kelaher:

Q. Eighty percent decrease. Does that apply to Atlantic and ~~Sinclair~~ stations?

A. Yes, sir.

205 Q. Mr. Wetzel, do you solicit the business of Atlantic or ~~Sinclair~~ service stations who are either opening as new stations or where a new operator is taking over?

A. Yes, sir, I do.

Q. What has been your experience with selling batteries and accessories to such stations?

A. You can't.

Q. Who supplies, based on your knowledge and observation, who supplies TBA to the stations indicated?

A. Goodyear.

Q. Is that true of the designated Goodyear supply points?

A. Yes, sir.

Q. Based on your observation and knowledge of the market, what type of advertising is done by Atlantic and Sinclair dealers with respect to TBA items?

A. Goodyear primarily. They have a valance type advertising and outdoor signs.

Q. Based on your knowledge and experience prior to 1951; what type of advertising was carried by the Atlantic stations? What type of tire, rather.

A. At that time there was more diversified TBA. As I recall, Thermoid belts and hose were in at that time.

Q. Do you recall the tires that were carried at that time?

A. Lee.

Q. Do you recall the batteries?

206 A. Some were Lee. And then others of course were buying off-brand merchandise. There were some Reading batteries, some Cadmidyne.

Q. Were there any Exide batteries displayed?

A. Yes, I believe there were. I feel sure there were.

Q. Are you able to sell to any Atlantic or Sinclair stations on what is known as a stocking basis?

Mr. Thompson: I object to the use of the words "are you able to." Maybe he is, or maybe he isn't.

By Mr. Kelaher:

Q. Do you sell?

A. We are speaking now of TBA?

Q. Yes.

207 Mr. Mason: Not TBA.

Mr. Kelaher: Speaking of batteries and accessories. I think the record can show that when he refers to TBA, it is noted that Mr. Wetzel does not handle tires.

Mr. Thompson: My understanding, when he speaks of TBA, is that he is speaking of the Whiz line of accessories basically.

Mr. Kelaher: He is speaking of his complete line.

By Mr. Kelaher:

Q. Will you go ahead?

A. Some isolated hard parts are stocked by some of the stations that do minor repair work.

Q. Are hard parts included in the category known as TBA?

A. No.

Q. Now with respect to the battery and accessory lines you carry, what has been your experience?

A. I don't have any stocking accounts.

Q. Are you referring now to Atlantic and ~~Simclair~~ stations?

A. Yes, sir.

Q. Mr. Wetzel, you stated that you solicit Atlantic and ~~Simclair~~ stations. Do you solicit them for your own complete line of so-called—batteries and accessories?

A. Well, it is a rather futile attempt on batteries. The chemical lines, yes, we try. Filters, fan belts, hoses, again fall back into a category that is very difficult to sell
208 against the competition that you have in there.

Q. But you do attempt to get that business; is that correct?

A. Yes, sir.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: Cross examine.

Mr. Thompson: May we have a five-minute recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

209 Hearing Examiner Kolb: On the record.

Cross-Examination by Mr. Thompson.

Q. Mr. Wetzel, in your business biography, in view of the fact that Shell counsel is present, shouldn't we note on the record that you at one time worked for Shell?

A. Yes, sir.

Q. And after you left Shell you started this business of your own in Chester?

A. Yes, sir.

Q. You have done very well with it, haven't you?

A. It is successful.

Q. Approximately how many accounts do you have, Mr. Wetzel?

A. How many accounts?

Q. Yes.

A. Of all descriptions?

Q. How many people do you sell to among the categories that you described?

A. Approximately 250, I would say.

Q. What is this Whiz line? Is that a full or a short line of so-called chemicals?

A. It is a full line.

Q. I am not sure if the record is clear on what you told us about that Whiz line. Am I correct that after you had developed the Mac's line—that is M-a-c-'s?

210 A. Yes.

Q. You switched your accounts to the Whiz line?

Mr. Kelaher: He is characterizing the witness' testimony. He didn't state that.

Mr. Thompson: I asked whether my understanding was correct, Mr. Kelaher.

The Witness: I didn't switch my Mac's accounts. I switched the Whiz accounts.

By Mr. Thompson:

Q. In other words, you have been selling about a dozen Atlantic dealers Mac's products, and commencing about 1951 you commenced to build up the Whiz line, and sold that to them?

A. I sold the Mac's line originally. When sales on Mac's began to drop as a result of my inability to continue to sell them, I had to find a line which would replace Mac's that I could sell without competing with the existing suppliers of Mac's at that time. So I went to Whiz, and the accounts who were then buying Mac's through TBA were sold on the basis of profitability, premiums, and profit on Whiz as against Mac's-It. And they dropped the Mac's-It line and began to buy the Whiz line.

Q. That began to happen about 1951 or 1952?

A. I would say in that vicinity; yes, sir.

Q. At that time was the Whiz line promoted by Goodyear, was that a part of their TBA line?

211 A. Being included in and being promoted by I think is a definite point. It was not being promoted by. It was in the Goodyear line, but not being promoted by.

Q. But it was being sold by Goodyear?

A. It was in their line.

Q. Was it being sold by Ed Parris?

A. He had it available.

Q. And in spite of that competition from Ed Parris and

Goodyear you built up the Whiz line to the same volume that you previously enjoyed on your Mae's-It line?

A. Yes, sir.

Q. You did that over a period of about two years?

A. Yes, sir.

Q. During all of that time Parris had it for sale?

A. He had it available if he wished to sell it.

Q. Are you inferring that Parris just stepped out of that particular type of competition and let you have those dealers, or what?

A. He is not in a position to be able to compete with my salesmen for this reason: He operates a business with two people, where it requires me thirteen. In other words, my delivery service and my selling services are services that he does not need.

Q. You sell a large number of Atlantic stations at the moment, don't you?

212 A. TBA items?

Q. Yes.

A. None.

Q. Did I understand you to say that you don't sell any TBA items to Atlantic stations now?

A. Selling and buying are two different categories. They buy from me one or two filters to carry them over until Ed Parris can deliver them a case. They buy six or eight cans of merchandise to carry them over until Ed Parris can deliver a case or two cases or five cases, whatever the deal may be.

Q. How many competitors do you have in your accessories business in your part of the country?

A. Selling the same lines I sell?

Q. Selling the same types of accessories.

A. Selling the same lines, none.

Q. Selling the same types of accessories?

A. Three, in Chester.

Q. Who are they?

A. Motor Car, that is Motor Car Service; Auto Parts and Radiator; and E. B. Krausen.

Q. How about Philadelphia Wholesale Distributors?

A. Philadelphia Wholesale Distributors? They have a very few service station accounts most of which are Esso.

Mr. Kelaher: Are you referring to your marketing area?

213 The Witness: Yes.

By Mr. Thompson:

Q. What do you mean by "very few"?

A. I buy from Philadelphia Wholesale, and for that reason they respect my marketing area. Accounts that they had previous to the time that they sold to me on a jobber basis they have retained. Such accounts include G. M. Stull, which is a Ford agency; Luke Motors, which is the Oldsmobile agency; Maloney's Esso; John Chambers' Esso; —

Q. At his new Esso station?

A. At his new station.

Q. That is about the lot?

A. Chester Lincoln Mercury.

Q. No Atlantic?

A. Not to the best of my knowledge.

Q. Were you at the hearings this morning?

A. No, sir.

Q. You didn't hear Mr. Hoffman's testimony?

A. No, sir.

Q. How about Harris and Leonard? Aren't they your competitors?

A. No. I do not handle tires.

Q. How about Bowles? Are they your competitors?

Mr. Kelaher: Will you state the full name?

A. Bowes Corporation.

No, sir, they are not.

214 Mr. Kelaher: And their office?

Mr. Thompson: The principal office?

Mr. Kelaher: The one you are referring to.

Mr. Thompson: I don't know what their principal office is.

By Mr. Thompson:

Q. How about R. C. Chemical Company? Are they competitors of yours?

A. They have all off-brand merchandise and I do not consider them a competitor because the amount of merchandise that they sell in the Chester area is negligible.

Q. How about off-brand? What do you mean? Not nationally advertised?

A. Yes, sir.

Q. How about John Stewart?

A. John Stewart's lines are specialized lines such as car wash and bulk driveway items and bulk whiteside wall cleaner.

Q. Is he a competitor of yours?

A. Not in that category because most of the items I sell are resale items which would be sold on a resale basis and not self-consumed.

Q. Is V. J. Auto Parts one of your competitors, or do they carry off-brand merchandise?

A. V. J. would be considered a competitor. However, they are on the outskirts of my territory. They are in
215 Sharon Hill. That is just about the maximum of our territory.

Q. How about Lancaster Auto Supply?

A. I don't cross paths.

Q. Do you know Frank Buckingham?

A. Yes, sir.

Q. He has a station at Second and Lloyd, Chester?

A. Yes, sir.

Q. The station John Chambers formerly had?

A. Yes.

Q. Does he buy from you?

A. TBA items, no; hard items, yes.

Q. Doesn't he buy Puralator oil filters from you?

A. On the same basis that other dealers do, in quantities of one or two to fill in until such time as he can get a shipment from Ed.

Q. Is it your impression that he buys exclusively or substantially exclusively from the Goodyear supply point?

A. I would say 95 percent of his merchandise.

Q. Do you know his station at all and what he has for sale there?

A. It has been possibly three or four months since I have been in that territory, or in Frank's station. But basically I have some idea of some of the merchandise that is in there.

Q. Would you say I was exaggerating if I suggested to you that he had eight independent suppliers besides yourself?

216 A. No, that is very possible, but what is he buying from those eight suppliers?

Q. Perhaps you could tell me, sir, since you are on the stand.

A. You tell me who the suppliers are and I can probably tell you what he is buying.

Q. Delaware County Auto Parts. What do you suppose he buys from them?

A. Delaware County Motor Parts?

Mr. Mason: On that basis, your Honor, I move that all previous testimony with respect to Whiz be stricken because that is not a part of the Goodyear TBA line.

Hearing Examiner Kolb: That is a comparable product

that is put out by Goodyear. Waxes, polishes, radiator solvents and so forth.

Mr. Mason: Whiz is not a part of the Goodyear TBA line, and there has been a good deal of testimony that he has lost business to Goodyear with respect to Whiz.

The Witness: That testimony was dated.

Hearing Examiner Kolb: As I understand, anti-218 freeze is not a TBA product. The Whiz products are TBA products so far as they are comparable.

Mr. Mason: As I understand it, anti-freeze is a TBA product but is not part of the Goodyear TBA line.

Hearing Examiner Kolb: Motion will be denied.

By Mr. Thompson:

Q. Do you know from your observation of the Buckingham station whether he buys from the Bowes Corporation oil filters and stocks them?

A. From the Bowes Corporation?

Q. Yes.

A. It would be impossible for me to say.

Q. He does stock Bardahl, does he not?

Mr. Kelaher: Objection. Bardahl is not a TBA item. It is a motor oil.

Mr. Thompson: You are correct. I will withdraw that question.

By Mr. Thompson:

Q. Did you say you didn't know the R. C. Chemical Company?

A. I know that.

Q. Does Mr. Buckingham buy part of his so-called chemical line from the R. C. Chemical Company?

A. That would be difficult for me to say. I don't know.

Q. I don't want to be too prolonged on one station. You of course do sell Conneen, Chester Pike and Fairview Road?

219 A. Yes, sir.

Q. A large number of other suppliers do the same thing, don't they?

A. I couldn't say. I know that I sell him. I don't know what my competition sells him.

Q. How about Earl Connors?

A. At Ninth and Flower?

Q. Yes.

A. We sell Connors hard items, yes.

Q. How about DiFelice, at Ridley Park?

A. Yes, sir; I sell him hard items.

Q. You also sell him such things as Purolator filters, don't you?

A. Yes, sir. There is an interesting situation there. Perhaps you would be interested in hearing it. I sold him a bonanza deal and he was told to send it back to me.

Q. By whom?

A. TBA distributor.

Q. Did he?

A. He refused to. There were eight filters out of the bonanza and he told him to take them out of the new bonanza he was going to get from TBA, take them out and send them to me.

Q. The fact is that this man buys from about eight different suppliers, isn't that true?

A. That I couldn't say. I don't know where he buys.

220 Q. How often do you go to see him?

A. Once a week.

Q. You don't know what he buys and stocks?

A. I know the merchandise he stocks.

Q. Do you know how many sources of supply he has?

A. I know that he buys hard items from Eddy Davis,

and he buys hard items from myself. Where he is buying his chemicals other than Ed Parris I couldn't hazard a guess.

Q. I think you mentioned Drozdowski before?

A. Yes, sir.

Q. He still buys quite a bit from you, doesn't he?

A. Hard items, yes.

Q. And from a lot of other people? I mean he buys accessories from a lot of people, doesn't he?

A. That I could not say.

Q. He buys Purolator and AC filters from you?

A. No, sir, he does not.

Q. How about Sam Dugross?

A. No, sir. I do not have him on the books.

Q. He is not on your books at all? He is a customer of

V. J. Auto Parts.

A. I don't know the gentleman.

Q. You don't know him?

A. No, sir.

Q. Is Main and Ridge, in Darby, out of your area?

221 A. Yes.

Q. How about Gillipan, Edgemont Avenue and Maple, Brookhaven?

A. That is Al Kahler's son-in-law?

Q. Yes.

A. Yes, he buys hard items from us.

Q. Frank Lancaster, Chester?

A. Hard items.

Q. Also Purolator?

A. I haven't sold Frank any more than two Purolators at a time in the past year and a half.

Q. He buys from C. A. Powers, doesn't he?

A. That I don't know.

Q. Delaware County Auto Parts?

A. No.

Q. You don't know who his suppliers are?

A. No.

Q. How much do you know about Mr. Mann's business at Haverford and Brookhaven Road?

A. I don't know.

Q. Is he one of your accounts?

A. No.

Q. Bill McKee, at West Chester Pike and Newton Road?

A. I sold Bill McKee hard items when he was at the station Al Kahler's son-in-law now has. I haven't seen him since he moved to Newtown Square.

222 Q. Do you know who does sell him?

A. I couldn't tell you now.

Q. How about Joseph Raffa? Is he one of your accounts?

A. He is in our marketing area but doesn't buy from us.

Q. You sell quite a bit to both Rehills, don't you?

A. Hard items, very definitely; mufflers, tail pipes.

Q. That is all? That is all you sell them?

A. Yes.

Q. Are your sales primarily for cash or credit to the service stations?

A. About 75 percent charge and 25 percent cash.

Mr. Thompson: May I have a one-minute recess to consult counsel?

Hearing Examiner Kolb: Yes.

(A brief recess was taken.)

223 Mr. Thompson: I have no further questions.

By Mr. Mason:

Q. Mr. Wetzel, when did you first learn that you were going to testify here?

A. Is there a date on that subpoena?

Q. It was by virtue of the subpoena that you first learned?

A. Yes.

Q. Had you been asked previously whether you would be willing to testify?

A. Yes, sir.

Q. Who asked you?

Mr. Kelaher: Objection. I can't see any relevance to this line of questioning.

Mr. Mason: This is cross examination.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Mason: Read the question.

(Question read.)

The Witness: I was asked by the Federal Trade Commission.

By Mr. Mason:

Q. Did the Federal Trade Commission happen to be represented by a person with a name at that time?

Mr. Kelaher: Objection, your Honor. I think he has answered the question. Any representative of the 224 Federal Trade Commission would be acting in an official capacity. I see no reason for putting names in the record.

Hearing Examiner Kolb: He can testify as to who he talked to.

By Mr. Mason:

Q. Who was it?

A. Mr. Kelaher, I don't believe I talked to you the first time, did I? There were three gentlemen, were there not, originally?

Mr. Kelaher: That's right.

By Mr. Mason:

Q. When did this original conversation take place?

Mr. Kelaher: I think, in order to get the record straight,

if he wants to go into it, I can give him the dates, going back a few years, when the Federal Trade Commission representatives called on him.

Mr. Mason: I don't intend to question him very long.

Hearing Examiner Kolb: Let him go along.

The Witness: I would say it probably has been sometime this year. The very early part of this year, I believe. The exact date I couldn't tell you.

By Mr. Mason:

Q. At this original conversation, were either of these two gentlemen in the room present?

225 A. This gentleman here was present.
(Indicating Mr. Kelaher.)

Q. At that time did you make available to the members of the Federal Trade Commission any of your books and records?

A. Yes, sir.

Q. Could you just tell us which books and records they were?

A. My purchases.

Q. And did they have the figures on these purchases as a result of this conversation? Did they take notes?

A. Notes were taken, yes.

Q. Let me ask you this: How would you feel about letting the other side have a chance to look at your records?

A. No objection whatsoever.

Q. So we can go and take a look at your records?

A. Sure. With my permission.

Q. At a time—

A. At my permission. I don't want you going into my place of business without my permission. I will be there at the time.

Q. Of course. We would like to work out such reasonable arrangements as we could. Did you, at this time, make any statements in writing?

Mr. Kelaher: At which time are you referring to?

Mr. Mason: At the first occasion.

The Witness: In writing? No.

226 By Mr. Mason:

Q. Have you ever at any time given any member of the Federal Trade Commission a statement in writing?

A. Not in writing, no.

Mr. Mason: I have no further questions.

Mr. Kelaher: I have some redirect, Mr. Examiner.

Redirect Examination by Mr. Kelaher.

Q. In order to get the record straight on the sequence of brand names with respect to Mac's-It, Whiz, et cetera, who was the original supplier of the Mac's-It line in your marketing area?

A. The original supplier?

Q. The original jobber-supplier.

A. From 1940 until 1946—

Q. ~~I am~~ talking about the period since you—

A. Since I have been it? I was.

Q. Just give us the date approximately, when did you begin to develop it? I think you have done it already.

A. 1946 actually when we first went in business. We had the line made available to us I would say in late 1946. 1947 was the development year.

Q. When was the Mac's-It line taken on by the Goodyear TBA supply point; Mr. Parris, first?

A. The exact date would be hard to say, Mr. Kelaher. I don't know.

Mr. Thompson: It appears of record.

Mr. Kelaher: I think there is a little confusion on it.

By Mr. Kelaher:

Q. Was it taken on as a part of the Goodyear TBA line?

A. Yes. It appeared in the Goodyear TBA catalog,

the product appeared in there, and it was available to the distributor. At what time it became available I couldn't tell you. It may have been available as early as 1946. It may not have been available until 1948 or 1949. But it did appear in the catalog at the time that I began to lose business.

Q. You are referring to the Goodyear catalog?

A. Yes, sir.

Q. Did that appear in the Goodyear TBA catalog when Atlantic dealers originally began to purchase the Goodyear TBA line?

A. I believe it did.

Q. Then you stated, in the sequence of events, that you began to sell the Whiz line?

A. Yes, sir.

Q. To Atlantic dealers and ~~Similar~~ dealers?

A. Yes, sir.

Q. With respect to your loss of the Whiz line of business, was that business lost to the Whiz, a Whiz line 228 carried by the Goodyear TBA supply points?

A. Yes, sir.

Q. When did they begin to sell the Whiz line?

A. They began to take orders on it after I had sold it.

Q. Although it had been in the Goodyear TBA line prior to that?

A. Yes, sir.

Q. In response to a question by Mr. Thompson, he alluded to the fact that you had sold approximately 12 Atlantic stations at the peak. Would you state whether that is correct or incorrect?

A. I would say it is closer to 20.

Q. You have testified that your sales volume on Mac's-It line and on the Whiz line ranged from say 6,000 to 7,200 dollars, approximately?

A. Yes, sir.

Mr. Thompson: I object to that and suggest that Mr. Kelaher write his brief at the proper point. This is just repetitions.

Mr. Kelaher: It isn't.

Hearing Examiner Kolb: The objection will be over-
229 ruled.

By Mr. Kelaher:

Q. I ask you now if that is considered a large sales volume on one brand of waxes and polishes?

A. For that particular marketing area, it is a good volume.

Q. Would that apply both to the Mac's-It volume and the Whiz volume?

A. Yes, sir.

Q. You were asked on cross-examination about a number of Atlantic service station dealers. I am going to ask you about each of these dealers to the best of our ability to take notes on them. There may be some confusion on names.

The first one you were asked about is a man identified as Frank Buckingham, I believe?

A. Yes, sir.

Q. What main line of TBA does that Atlantic dealer carry?

A. DuPont. You mean, as far as chemicals? He carries Goodyear tires, Goodyear batteries, Goodyear belt and hose line. I believe Frank carries Purolator, I am not sure. They have a couple of filters available to them.

Q. Who is the principal supplier of TBA products to this dealer?

A. Parris.

Q. What brands of TBA are advertised by Mr. Buckingham?

A. Goodyear.

230 Q. Does that include a Goodyear valance, a window valance, for example?

A. Yes, sir, I believe it does.

Q. Is there an outdoor sign?

A. I couldn't be definite on that. Most of them do.

Q. The next one you were questioned about was a Mr. Conneen. What brand of tires does Mr. Conneen carry?

A. Goodyear.

Q. What brand of batteries does he carry?

A. Goodyear.

Q. Who is his principal supplier of accessories?

A. Parris.

Q. And that is the Goodyear TBA line?

A. Yes, sir.

Q. Goodyear accessory line. What brand of TBA does Mr. Conneen advertise?

A. Goodyear.

Q. The next one—

Mr. Thompson: Do you know the answer to these questions?

Mr. Kelaher: I think I am entitled to develop this in my own way.

Mr. Thompson: Not unless he knows what he is talking about. I think you ought to develop that he knows the answer.

231 By Mr. Kelaher:

Q. These are based on your own knowledge?

A. Yes, sir.

Mr. Thompson: Are these based on your own knowledge?

The Witness: I am in Conneen's station every week.

Mr. Thompson: I think his memory has improved remarkably since cross-examination.

Mr. Kelaher: I think that is an unfair statement. He answered counsel's questions very clearly.

Mr. Thompson: I do not withdraw the statement.

Mr. Mason: I join in the statement.

By Mr. Kelaheer:

Q. You were asked about a dealer by the name of Earl Connors?

A. Yes.

Q. Do you call on Mr. Connors' service station?

A. No, sir.

Q. Do you have any reason to know by observation, what line of TBA he carries?

A. Unless it has changed since George Curney relinquished the station to Connors, it will be Goodyear.

Q. When was that station relinquished? Approximately?

A. I would say about 90 days ago. Perhaps four months.

Q. Up to that time they carried Goodyear TBA line?

A. Yes, sir.

232 Q. And, based on your observation of that station, do you know what brand of TBA was advertised?

A. It was Goodyear at that time.

Q. When you say Goodyear, you are also referring to waxes and chemicals which may be in the Goodyear line, is that right?

A. Yes, sir.

Q. And other accessories?

233 Mr. Mason: And others that may not be in the Goodyear line but sold by the Goodyear distributor.

By Mr. Kelaheer:

Q. Let me ask you with respect to non-sponsored brands which are not in the Goodyear line. Do you see advertisements of such?

A. Mr. Kelaheer, that is hard to say. These flash items come into the picture and go out. Somebody gets a demand,

we will say, for Turtle Wax and he gets five, six, or seven calls for it. He is liable to step out, buy a case of it, stick a banner up. If it begins to die off, the banner comes down, and the merchandise remains on the shelf until such time as it is eventually sold. That does come into the picture and it does change.

Q. With respect to window valances and outdoor signs, what identification is used? In the Atlantic stations that you have so far referred to.

A. The ones that I am calling on weekly, in the upper territory, DiFelice, Coneen, Crawford-Bryant and those boys, definitely have Goodyear advertisements. Their window valances are Goodyear.

Q. Without going into each individual station mentioned by counsel for respondent, I would like to ask you, based on your knowledge and experience, what the main line of TBA is that they carry—that each of them carries?

234 A. Goodyear in the rubber line, which constitutes the belts, hose, and rubber. Goodyear in the batteries. Dupont in the chemical lines. Purolator or AC in the filter lines.

Q. Would you say in general that they carry the Goodyear TBA line?

A. Yes, sir.

Q. With respect to all these Atlantic dealers, what is their primary advertising, window valances and outdoor signs and so on?

A. It falls right in the same category as their TBA supply.

Q. And you're referring to the Goodyear TBA line?

A. Yes, sir.

Q. With respect to all these dealers, in order to clarify the record, I believe you stated—let me ask you: Do you sell hard parts to all these accounts?

A. Not all of them.

Q. Do you sell batteries and accessories on a regular basis to these accounts?

A. Occasionally we will sell a battery. It is during the daylight hours and they happen to be out of one particular number and they have an immediate sale and they have a car that they can hold it long enough to run to the store and pick it up or give us a call and ask us if we can shoot one battery to them. In other words, what we term shotgun delivery and shotgun sale.

235 Q. Would it be fair to say that you sell them on a fill-in basis, to these Atlantic dealers?

A. It wouldn't even be fill-in. It is sporadic. You may go three months and never sell them a battery, and then sell them a battery today, one tomorrow, and then not sell them one for six months.

Q. With respect to accessories, does that same answer apply?

A. Yes. It holds in chemicals on the basis of a half dozen cans to carry me over. That has been going on for several years.

Q. And the primary supplier of all these Atlantic dealers is Mr. Parris?

A. Yes, sir.

Q. You were asked a question about Mr. DiFelice?

A. Yes, sir.

Q. You made reference in your answer to a bonanza deal. Would you explain what the so-called bonanza deal is?

A. This spring Purolator brought out an assortment of filters, constituted approximately a \$35 investment. For another \$1.95, as I recall, there was a set of dishes in there, service for four. It was all packaged in a unit. Dishes and filters packaged in a unit.

It so happened that I received delivery before Ed Parris received delivery, and so wherever there were Purolators

I tried to sell the bonanza deal. I sold the bonanza 236 deal to Gino Di Felice. Approximately three weeks after I had sold it to him I stopped in and he said, "You got me in a mess of trouble with this bonanza deal." I said, "What is the matter?" He said, "I am supposed to send this thing back to you, but I refused to do it because there were nine filters sold."

I said, "If it will give you any heartaches, send it back." He said he wouldn't send them back, he would keep them.

Q. Did he indicate who asked him to send them back?

A. Yes.

Q. Who?

A. The salesman who was calling on him.

Q. Who was the salesman?

A. The Atlantic salesman.

Q. You were asked on cross-examination about being employed by Shell. Would you please state what your position was with Shell?

A. Shell?

Q. Shell Oil Company?

A. My last employment with Shell, post-war, was industrial lube oil engineer, State of Virginia.

Q. Are you a graduate chemical engineer?

A. Yes, sir.

Mr. Kelaher: That is all.

237 *Recross Examination by Mr. Mason.*

Q. Mr. Wetzel, I want to get clear in my own mind this business of the dates when you reached the peak of your sales of Whiz. Am I correct in recalling that you said it was 1948 and 1949?

A. Not Whiz. It was Mac's first.

Q. Am I also correct in recalling that it was about that time that you saw Mac's appear in the Goodyear TBA catalogue?

A. It was at the time of the beginning of the decrease that Mac's came in and was available to the service station for the TBA distributors.

Q. I am trying to fix dates. That was about 1950? 1948, 1949?

A. That is possible. I would rather take a look at my records and show you when my purchases decreased and then I can better tell you the exact date.

Q. We would have done a lot better if we had had your records here.

One thing I want to make clear, do you realize there was no arrangement between Goodyear and Atlantic back in the period that you were testifying about?

A. That I couldn't say. I don't know—

Mr. Kelaher: Objection, your Honor.

Mr. Mason: This is a matter of record. I want to ask the witness whether or not he had that in mind when he was testifying.

Mr. Kelaher: I think he is mischaracterizing his testimony.

Hearing Examiner Kolb: It is cross-examination. Objection overruled.

By Mr. Mason:

Q. Did you have in mind the fact that there was no arrangement between Goodyear and Atlantic?

A. Let me put it this way—

Q: Just answer my question.

Mr. Reporter, would you read the question?

(Question read.)

By Mr. Mason:

Q. Let me amend the question to add: When you testified with respect to the dropping off of your sales of Mac's. You understand the question?

A. In other words, you would like me to quote a date at what time Mac's sales decreased?

Mr. Mason: Mr. Reporter, can you read the question as amended?

(Question read.)

A. Was I aware of it?

By Mr. Mason:

Q. Yes. At the time you testified earlier?

239 A. My earlier testimony I think if you check, will be approximately 1951 as a drop-off period. I think that is what I said. I feel pretty sure because it was in that vicinity that I changed from Mac's to Whiz, and then the build-up period on Whiz was from say late 1951 or early 1952 through the 1952-53 era.

Q. Did you ever look in the Goodyear catalogue to see whether Whiz was in it?

A. It isn't in it now.

Q. Was it ever in it?

A. Oh, yes.

Q. When was it in it?

A. I would say the Whiz products appeared from probably 1950 to 1953.

By Mr. Mason:

Q. Would it refresh your recollection if I told you that it is the understanding of Goodyear personnel with me here that the only Whiz product that has ever been advertised was Motor Rhythm, and that appeared in the catalogue from 1952 to 1954?

A. This I know: Mr. Bittenbender, of Whiz, definitely called on Ed Parris and I know that Ed Parris had available the entire Whiz line. To the best of my knowledge Mr. Bittenbender, as I recall talking to Mr. Bittenbender, all that material did come from Goodyear.

Q. So that is your understanding. But it could be
240 possible that you are wrong?

A. It is pretty difficult to say what is in what catalogues or what year. Do you know what was in Sears-Roebuck in 1953?

Q. In other words, you are not sure of your testimony?

A. Well, I know that it was made available to the dealers through Ed Parris.

Q. But you do not know whether or not it was a part of the Goodyear TBA program with Atlantic?

A. No, I couldn't say absolutely.

Mr. Mason: Thank you.

No further questions.

Mr. Kelahe: No further questions.

Hearing Examiner Kolb: That is all, Mr. Wetzel. Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will recess until 10:00 o'clock tomorrow morning, tenth floor, Land Title Building, at Broad and Chestnut Streets.

242 Hearing Examiner Kolb: On the record.

Mr. Kelahe: Mr. Examiner, counsel for respondent Atlantic, and counsel supporting the complaint, have entered into a stipulation with respect to the testimony of appropriate officers and employees of Atlantic if called as witnesses in this matter.

It is our understanding that this stipulation will make it unnecessary to call officers and employees of respondent Atlantic insofar as we know at this time. However, it is clearly understood that this does not foreclose counsel supporting the complaint from calling such officers and employees of respondent Atlantic if circumstances later dictate.

I would also like to state that counsel for respondent Atlantic have cooperated fully in preparing this stipulation and that it will greatly expedite the trial of this matter.

Hearing Examiner Kolb: Let the record show that the stipulation was executed by both parties, and if satisfactory it will be read into the record at this time.

Mr. Ballard: It is satisfactory to be read into the record as far as Atlantic is concerned.

Mr. Kelaher: "United States of America. Before Federal Trade Commission. In the Matter of The Good-243 year Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

"Stipulation re testimony of the Atlantic Refining Company personnel.

"Counsel for respondent, The Atlantic Refining Company ('Atlantic'), and counsel supporting the Complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the Complaint in this proceeding, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

"1. Organization of Domestic Sales Department.

"1.1 Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine), and the Southern Atlantic States. For administrative purposes this marketing territory is divided into six regions. CX

82A-C and 83A-C indicate the boundaries of these regions as of August 1952, and there have been no material changes since that date. Within the boundaries of the various 244 regions are large areas such as the State of Georgia (except for metropolitan Louisville, Augusta and Savannah) and the State of South Carolina (except for metropolitan Rock Hill and Dillon) in which Atlantic sells only to distributors and not to dealers, and other large areas such as New York, N. Y., and substantially the entire northern half of the State of Georgia where Atlantic has no outlets at either the distributor or the dealer level.

"1.2 Sales of Atlantic products to petroleum retail dealers and petroleum wholesalers are made by Atlantic's Domestic Marketing Department (formerly called 'Domestic Sales Department'). The organization of this department for the period 1949 through 1956 is shown in CX 81A-F.

"1.3 Within the Domestic Marketing Department there is a Regional Manager for each of the six sales regions. Such Regional Managers are entrusted with broad authority to implement the Company's over-all sales policies within their regions.

"1.4 The regions are subdivided into districts consisting in general of a city or other marketing center and the surrounding territory. A District Manager reporting to the Regional Manager is in charge of each district. The present districts are as follows:

"New England

Providence

Springfield

245

Hartford

Boston

New Haven

"New York

Syracuse
Southern Tier
Albany
Rochester
Watertown
Buffalo

"Phila.-New Jersey

Phila.-Sub.
South Jersey
North Jersey

"Eastern Pennsylvania

Wilmington
Allentown
Wilkes-Barre
Harrisburg
Reading
Williamsport

"Western Pennsylvania

Pittsburgh
Altoona
Greensburg
Erie

"South

Charlotte
Baltimore
Richmond
Jacksonville
Miami

"1.5 Each district has a staff of salesmen of various types reporting to the District Manager. The number of salesmen differs in accordance with the number and importance of customers and potential customers in the 246 district. As of April 30, 1956, there were in the aggregate approximately 394 salesmen calling on dealers

and distributors, an average of about 13 salesmen per district. The designations, approximate numbers and functions of these salesmen were as follows:

Type	Approximate No.	Function
Promotable dealer salesman	133	Sells Atlantic products and promotes recommended TBA to 'promotable dealers', which term includes lessee dealers and contract dealers interested in complete service station operation.
Dealer salesman	25	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen (usually in areas of sparse distribution) or to special groups such as car dealers in other areas.
General salesman	54	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen or dealer salesmen, and also sells Atlantic products to smaller Commercial accounts.
Service salesman	147	Teaches dealers and their employees merchandising techniques and how to perform the services normally performed by first class service station operators. This teaching involves both petroleum products and TBA. For teaching purposes the salesman uses the TBA on hand at the station.
Wholesale salesman	35	Sells Atlantic products and promotes recommended TBA to distributors and wholesale dealers.

All Atlantic salesmen are paid on a salary basis. Promotable dealer salesmen also receive extra compensation based upon percentage gains in purchases of gasoline, motor oil and recommended TBA (and also over-all gains) by those of their assigned dealers who have been in operation for a minimum of 12 months. Extra compensation for gasoline gains ranges from \$4.70 per three months for 248 a 2 percent gain on deliveries of 299,999 gallons or less in the three-month period (as compared with the corresponding period in the preceding year) to \$233.94 per three months on gains of 21 percent or more on deliveries of 3,000,000 gallons or more in a like period. Extra compensation for motor oil, TBA and for over-all gains are computed on a similar basis taking into account the quantity delivered and the percentage gain in the specified period.

"1.6 Within the Domestic Marketing Department there is a TBA Section Manager who is the staff person responsible for implementing TBA policies on a company-wide basis. Within each region the TBA Coordinator, reporting to his regional manager, is the staff person responsible for implementing Atlantic's TBA policies in his region. He advises, informs and assists the districts in his region in developing their TBA program. The current TBA coordinators and the regions to which they are assigned are as follows:

TBA Coordinator	Region
H. H. Roller	New England
L. K. Maisel	New York
W. J. Jackson	Philadelphia—New Jersey
G. E. Fearn	Eastern Pennsylvania
R. E. West	Western Pennsylvania
E. M. Singleton	Southern

"1.7 The Atlantic employees readily identifiable as being concerned with TBA and the approximate per-

centage of time spent by them in that connection are as follows:

(a) Employees devoting their full time to TBA:

Number	Classification
1	Manager, TBA Section
1	Field Assistant, TBA Section
1	Office Assistant, TBA Section
6	Region TBA Coordinators.

(b) Salesmen concerned with TBA:

"The different types of salesmen described in paragraph 1.5 devote different percentages of their time to TBA, the largest percentage being devoted by the promotable dealer salesman and the smallest by the general salesman. On an overall basis it is believed that between 10 percent and 20 percent of these salesmen's time is devoted to TBA.

(c) Additional officials of the Domestic Marketing Department concerned with TBA:

"The officials listed below, together with their respective subordinate executive, administrative, secretarial, accounting and sales supervisory personnel, devote a portion of their time to TBA, the exact amount of which cannot be determined. For relationships of the various divisions and sections as of 8/15/56, see CX 81A. Certain of these relationships have since been revised.

250 Number	Classification
1	General Manager, Domestic Marketing Department.
1	Assistant General Manager, Domestic Marketing Department.
1	Manager, Product Sales Division.
1	Manager, Marketing Operations Division.

- 1 Manager, Service Station Section, Operations Division.
- 1 Manager, Sales Promotion Section.
- 1 Manager, Advertising Section.
- 1 Manager, Credit & Collection Division.
- 1 Manager, Real Estate Division.
- 1 Manager, Market Research Division.
- 6 Managers, Marketing Regions.
- 6 Managers, Region Sales Groups.
- 7 Region Direct Marketing Managers.

29 Managers, Marketing Districts.

"2. Leases, Contracts and Relationships with Customers.

"2.1 The designation and description of customer classifications for Atlantic's Domestic Marketing Department as of August 1952 and the percentage of total gasoline sales for 1951 are set forth in CX 84A-C. The corresponding designations at present and the corresponding percentages of total gasoline sales for 1955 are:

251 Designation Present Designation and Percentage of
in 1952 Total Gasoline Sales for 1955

I	Company-operated station, 0.1 percent
II	Lessee dealer, 39.1 percent*
III	Contract dealer, 18.1 percent*
IV	Commercial account, 16.6 percent
V	Wholesale dealer, 1.1 percent*
VI	Distributor, 24.0 percent*
VII	Jobber, less than 1.0 percent

"2.2 There are no leases or contracts between Atlantic and the managers of company-operated stations. As of September 30, 1956, there were 7 permanent company-operated stations and 39 temporary company-operated

* Commissions are paid under the sales commission plan on purchases by these classes of customer.

stations. The latter are stations intended for operation by a lessee which are temporarily operated by company employees while the lessee is being selected or trained.

"2.3 Typically, the documents between Atlantic and lessee dealers are as follows:

"(a) Dealer lease on Form B-3191.

"(b) Accompanying document referred to as 'Eleven Point Lease Letter', not identified by number or title.

"(c) Equipment and apparatus inventory, Form B-3191A.

"(d) Agreement covering purchase of Atlantic 252 automotive lubricants, Form B-3105.

"CX 88A-1 through 88D, respectively, are current versions of the foregoing forms.

"2.4 Prior to August 1956 the lease form in use in the New York region contained different provisions as to the determination of rentals in paragraph 4 from the lease in use in other regions, the New York form being designated as B-3191Y. (CX 88E-1-E-2) Prior to August of 1954 provisions respecting the credit card privilege of lessee dealers were contained in a separate agreement, Form B-3194 (CX 89, 89A), instead of in paragraph 14 of B-3191 as at present.

"2.5 Typically, the documents between Atlantic and contract dealers are as follows:

(a) Equipment loan and sale of motor fuel agreement, Form B-3107A (CX 90A-B, 90-C-D).

(b) Agreement covering purchase of Atlantic automotive lubricants, Form B-3105 (CX 91, 88D).

(c) Credit card agreement, Form B-3194 (CX 89, 89A).

(d) Loaned Equipment Contract, Form B-42 (CX 97, 97A).

"2.6 Typically, gasoline distributors enter into an Authorized Distributor's Agreement, Form B-3143 (CX 95A-C, 95D-F), and an Authorized Distributor's Agree-

ment relating to Atlantic Automotive Lubricants, Form 253 B-3119 (CX 96, 96A); certain distributors enter into a Commission Distributors Consignment Agreement, not identified by number (CX 98H-L); wholesale dealers selling gasoline do not normally enter into any kind of contract with Atlantic; certain wholesale dealers selling gasoline enter into a Commission Agent Consignment Agreement, not identified by number (CX 98M-Q); and gasoline jobbers enter into a Bulk Sales Agreement, Form B-3137 (CX 98R-T).

"2.7 The following exhibits are forms used in or prior to 1952, the present status of which is indicated:

CX No.	Form Designation	Status
87	B-3191B	Discontinued.
92A-B	B-3121	Has always been and still is used with commercial accounts only.
93A-C	Commission Agreement Form	Replaced by Contract Sales Agreement Form.
94A-D	Commission Dealer Agreement Form	Replaced by Contract Sales Agreement Form.
97	B-42	Originally used primarily for commercial accounts; used today also for certain non-gasoline equipment of some dealers.
98A-G	Commission Distributor Agreement	Use discontinued about 1950; some agreements may still be in effect.
254.		

The forms referred to in the preceding and following paragraphs have been revised from time to time. In revising forms, Atlantic follows the general practice of indicating the year and month of the revision immediately following the form number, and thereafter uses the revised

forms when leases and agreements in the old forms expire. Thus, at any particular time agreements may be outstanding in several different versions.

"2.8 Form B-3188 'Contract Sales Agreement—Trained Dealers' (CX 98U-V) is the form of agreement which, on occasion, is entered into between Atlantic and newly-trained dealers. This agreement, which provides in effect for sales of gasoline (but not other products) on consignment, is in addition to the regular B-3191 lease and is for a maximum period of 9 months, with an option for cancellation by either party at the end of 6 months.

"2.9 Where extraordinary competitive conditions adversely affect normal dealer operations, Atlantic is willing to enter into a Contract Sales Agreement, not identified by number (CX 98W-X), which also provides in effect for sales of gasoline on a consignment basis.

"2.10 With the exceptions noted in paragraph 2.8 and 2.9 above, Atlantic does not sell to dealers on what might be described as a consignment basis.

"2.11 On April 1, 1953, Atlantic adopted a long-255 term dealer lease policy under which any lessee dealer who has established a record of two years of satisfactory operation is eligible for a 3-year lease on Form B-3191 containing an exclusive right on the dealer's part to cancel without cause as of any annual anniversary date on 60 days' notice, the rental remaining the same during the entire 3-year period. At the same time, Atlantic adopted the Eleven Point Lease Letter referred to in paragraph 2.3 (CX 88B) defining standards of satisfactory operation by lessee dealers. Prior to April 1, 1953, leases were customarily on a year to year basis. Under the present policy the salesmen report to the district manager what they consider instances of unsatisfactory operation by lessee dealers, and the district manager decides whether to issue a warning letter.

"2.12 In the years 1950 to 1955, inclusive, Atlantic made loans to its distributors for working capital or to finance the acquisition, construction or improvement of facilities as follows:

Year	No. Distributors Borrowing (non-cumulative)	Total Amount Lent
1950	1	\$ 22,000
1951	1	10,000
1952	1	25,000
1953	0	0
1954	5	257,000
1955	0	0

256 "Loans are not made to distributors' customers.

Loans are made to contract dealers for the same purposes as loans to distributors, but the number and amounts of such loans could not be determined without a costly and time-consuming survey.

"As of the specified dates, loans to lessee dealers, primarily to finance the acquisition of equipment, tools and inventory, were outstanding as follows:

As of These Dates	This Number of Lessee Dealers	Owed This Much Money	Against Loans Which Originally Amounted to
12/31/51	118	\$140,834	\$195,401
12/31/52	362	425,403	650,002
12/31/53	420	539,520	875,792
12/31/54	412	526,186	856,376
12/31/55	418	481,170	827,817

"Atlantic's policy is to charge interest on all loans. The handling of recommended TBA is not a requisite for obtaining a loan, and no records are kept as to whether distributors or dealers who obtain loans do or do not sell recommended TBA.

"2.13 Atlantic provides a five weeks' training course in service station operation for prospective lessee dealers

(who, upon completion of the course, are signed as lessees as stations become available for them) and also for contract dealers. On occasion, distributors' dealers at 257 tend these courses. Also, in many cases, an Atlantic

Service Salesman works with the newly-trained dealer during the first two weeks of actual operation. In addition, there is a program of in-station training for all established dealers conducted by Atlantic Service Salesmen, including clinics for dealers' employees.

"In these training courses and clinics recommended TBA items are used as 'props'.

"The five-week dealer training course involves a total of 180 hours, which are divided approximately equally between classroom and on-the-job instruction.

"Technical subjects make up the major portion, entailing at least 98 hours and including such topics as:

- The Internal Combustion Engine
- Lubrication Practice
- Wheel Bearing Packing Procedure
- Servicing Electro-Hydraulic Mechanisms
- Car Waxing and Polishing Methods
- Servicing Automatic Transmissions
- Tire Changing and Repairing
- Electrical System Servicing
- Cooling System Servicing

"Courses on business management account for about 36 hours and cover such topics as bookkeeping, taxes, employee selection and training, and techniques for evaluating business progress.

"Training in salesmanship and sales promotion covers a minimum of 26 hours and relates to solicitation, market surveys, displays and advertising.

"Many of the courses, including some already referred to, relate to TBA, but without reference to any particular

brand, except as props may be used in demonstrations. They cover the following: a description of what TBA comprises, and its economic importance to the dealer; the techniques for selling TBA, including direct solicitation, merchandise display and advertising; methods of installing and servicing the various types of TBA; selling TBA under the Atlantic credit card system; methods by which a dealer can evaluate his sales performance with respect to TBA; and methods for protecting the inventory of TBA from loss by deterioration and pilferage.

"About 8 hours of the course deals with the recommended line of TBA.

"2.14 Any dealer, to do business successfully, requires an initial stock of TBA. Atlantic assists him in evaluating the anticipated volume and nature of the business and deciding upon the amount of the initial stock. As part of its promotional activities under its sales commission contracts, Atlantic also attempts to convince him of the advantages of carrying the recommended brands but makes clear to him that he has every right to handle the TBA 259 brands he believes in. When there is a change of dealers at a station, the TBA stock on hand, regardless of brand, becomes available for purchase by the incoming dealer if he desires to purchase it, unless the outgoing dealer prefers to retain it for sale at a new location. The determination as to items to be sold is made by the dealers. Atlantic generally assists in securing prices on the various items and in estimating the salability of questionable items, such as shopworn or obsolete goods and used equipment. In cases where the purchase of any part of the stock is to be financed by Atlantic, Atlantic will purchase the same from the outgoing dealer and immediately transfer it to the incoming dealer against a note for the purchase price. In the infrequent instances where no replacement dealer is immediately available, Atlantic will purchase the TBA

stock of the outgoing dealer to the extent it believes such stock will be acceptable to the new dealer when one is obtained. While in general Atlantic purchases salable recommended TBA items, at times non-recommended items may be purchased if they are in salable condition. No adjustment is made as between Atlantic and the outgoing dealer in respect of their relative contributions to the good will of Atlantic, the dealer or the station.

"2.15 Atlantic provides equipment of various types and in varying degrees to its dealers, the assortment furnished to lessee dealers being relatively complete and 260 to contract dealers less extensive. 'Atlantic' signs and infrequently other items are provided to distributors for their dealers. There is no official list of such equipment, but the items most frequently provided to contract dealers include pumps, tanks, compressors, air towers, lifts, 'Atlantic' sign, outside lighting and poster frames, and to lessee dealers include, in addition to the foregoing, fire extinguishers, work benches, shelving and desks. No charge is made for these items to contract dealers or to distributors, and in the case of lessee dealers the items are considered part of the leased premises. No figures are available as to the average value of equipment supplied either to lessee or contract dealers or to distributors.

"2.16 Atlantic uses television, radio, newspapers, billboards, and (to a small extent) magazines to advertise Atlantic gasolines, motor oils, lubricants and car conditioning services and also to advertise TBA items and service without regard to brand. Such advertising is paid for entirely by Atlantic. Atlantic also has a sales promotion program involving the furnishing of driveway posters and other dealer aids to the dealers, direct mailings to credit card holders, and other promotional devices. Atlantic will guide individual lessee and contract dealers,

distributors and distributors' dealers in preparation of promotional material, and will reimburse lessee and contract dealers (but not distributors or their dealers) 261 for a part of the cost of advertising through direct mail, radio, handbills and newspapers (without regard to the brand of TBA which may be included), with the limitation that Atlantic's share of any dealer's advertising is limited to 11 percent of the dealer's gross annual sales. For 1955 the total reimbursement under this program was \$16,021.67 to both lessee and contract dealers; records do not disclose the totals for each such group separately. The records maintained are not kept in a manner that shows how this figure was split between promotional material for TBA and other products and services.

262 "2.17 Atlantic's average property investment in a newly constructed lessee-operated station which it owns, including land, building and equipment, is presently about \$50,000.

"2.18 Service station operation requires land, buildings, equipment, tools, supplies and merchandise, which may be acquired as appropriate, by purchase for cash or on credit, by lease, rental or loan, or by consignment. The facilities may be simple or elaborate; the equipment, new or used; and the merchandise, basic or extensive. It is therefore impossible to establish meaningful average, minimum or maximum figures for investments by contract dealers and distributors. Because there is a greater uniformity in the design of leased stations at the present time, the minimum initial investment of a lessee dealer can be estimated at about \$4,000 for the average lessee station, which sells about 15,000 gallons per month. Of this investment, approximately \$500 would be in equipment and supplies, \$1,000 in cash, and the balance in merchandise for resale. The minimum initial investment would be about \$3,000 for a low-gallonage, lessee station and about \$15,000 for a very high-gallonage, lessee station.

"2.19 Following is a list of service station services that Atlantic dealers should be able to render satisfactorily:

1. Driveway Service (filling gas tank, cleaning 263 windshield and lights, et cetera.)

2. Chassis Lubrication.

3. Other Lubrication Services:

A. Oil Change

B. Transmission

a. Conventional

b. Automatic

C. Differential

D. Air Cleaners

E. Speedometer Cable

F. Electro-Hydraulic Mechanisms

G. Front Spring Unit Housing (Knee Action).

H. Front Wheel Bearings

I. Lube Fitting Installation

J. Oil Type (Wet) Clutch

K. Hydraulic Steering Mechanisms

Services Occasionally Required

L. Universal Joints

M. Metal Covered Springs

N. Clutch Release Bearing

4. Battery Service

A. Preparation of Dry Batteries for Sale

B. Testing by Open Circuit Testers (and Hydrometer)

C. Adding Water

D. Cleaning Terminals

E. Fast Charging

264 F. Slow Charging

G. Installing Batteries—6 Volt—12 Volt

H. Installing Battery Cables and Holddowns

5. Tire and Tube Services
 - A. Inflating Properly
 - B. Demounting and Mounting Conventional and Tubeless
 - C. Tube Repairing—Hot and Cold Patches
 - D. Rotating Tires
 - E. Minor Casing Repairs
 - F. Wheel Balancing (only if proper balancing equipment is available.)
6. Cooling System Service
 - A. Draining and Flushing
 - B. Cleaning and Protecting
 - C. Anti-freeze Servicing
7. Fan Belts
8. Radiator Hose
9. Shock Absorber Service
10. Brake Fluid—adding to master cylinder—bleeding
11. Electrical System
 - A. Ignition Wires
 - B. Lamps and Lights
 - C. Fuses and Circuit Breakers
12. Oil Filter and Filter Cartridges
13. Heater Hose
- 265 14. Spark Plugs—Testing, Cleaning, Regapping
15. Thermostats and Pressure Caps
16. Windshield Wiper Blades and Arms Service
17. Tire Chain Installation and Repair
18. Car Washing
19. Car Waxing and Polishing

266 : "In addition to the services listed, Atlantic encourages lessee and contract dealers to do 'tune ups', 'adjustments' and minor repairs. Atlantic discourages general repairs which occupy so much space or personnel

as to interfere with fundamental service station activities.

2.20 Service stations require long hours of operation. The hours of a particular station are determined by the buying habits of the trade where the station is located and the hours of competitive dealers. There are wide differences between stations in the number of hours of operation per week, on particular days of the week and in different seasons of the year. Atlantic expects its dealers to keep competitive hours but does not specify particular hours for particular stations. In the case of a few stations (generally operated by lessees) it is economically advisable to keep open 24 hours a day, and Atlantic encourages the dealers to do so.

2.21 Atlantic makes available to its dealers a suggested system of service station bookkeeping, including bookkeeping materials (CX 191 A-Q). A minority of Atlantic's dealers are believed to use this suggested form of bookkeeping. While the number using this form might be expected to increase under the new lease form B-3191 (7/56) (CX 88 A-1—A-3), no such trend has yet become apparent.

2.22 Atlantic does not establish TBA quotas, but 267 does recommend to all dealers handling TBA the maintenance of a balanced stock of these items. The exact items and the quantity of each such recommendation depend upon the volume of business, the type of customers, the location, the proximity to sources of supply, the availability of capital for investment in merchandise, and storage facilities. In making their recommendations, Atlantic salesmen may, on occasion, use the Goodyear ~~-----~~ Atlantic does not guarantee the credit of its dealers to suppliers of TBA or other items purchased by them.

2.23 Dealer meetings (at which all Atlantic dealers are welcome, including lessee dealers, contract dealers and

[or Firestone Basic Guide (CX 192)]

distributors' customers) are held from time to time by Atlantic salesmen or regional or district staff personnel, the regional TBA Coordinator, Goodyear * * *, either alone or jointly with Atlantic personnel, and manufacturers of accessories sold by Goodyear * * *. Manufacturers of tires, batteries and accessories not sold by Goodyear * * * also hold meetings for dealers, including Atlantic dealers. The frequency, location and character of dealer meetings depend upon many circumstances, including the personalities and methods of the persons and groups who hold such meetings and the funds and facilities available. The cost of such meetings is borne by the company or companies holding the same.

268 "2.24 During 1955 Atlantic had on the average about 2480 stations available for operation by lessee dealers, an increase of about 160 over the average for 1954. In the course of the year 1955, about 720 lessee dealers ceased to operate as lessees of Atlantic and had to be replaced by Atlantic.

"3. Atlantic's TBA Program Before 1950 and Exploration of Alternatives.

"3.1 Before 1950 Atlantic purchased tires, batteries and accessories for resale to Atlantic dealers. It handled principally Lee tires, Exide batteries, Du Pont polishes and chemicals, Thermoid fan belts and radiator hose, Weed chains, Fram oil filters and cartridges, Schrader valves, and other brands of other accessories. With immaterial exceptions, purchases of these items were made by Atlantic direct from the manufacturer. The company names and addresses of these manufacturers are as follows:

Brand Name	Manufacturer
Lee	Lee Tire & Rubber Company 22nd and Race Streets, Philadelphia, Pennsylvania.
Exide	Electric Storage Battery Company 42 South 15th Street, Philadelphia, Pennsylvania.
Du Pont	E. I. Du Pont de Nemours and Company Wilmington, Delaware.
269 Thermoid	Thermoid Corporation Trenton, New Jersey.
Weed	American Chain and Cable Company York, Pennsylvania.
Fram	Fram Corporation Providence, Rhode Island.
Schrader	A. Schrader Sons 470 Vanderbilt Avenue, Brooklyn, New York.

"3.2 In 1947 the Domestic Marketing Department, recognizing the fundamental importance of a TBA program to Atlantic, its dealers and their customers, initiated an investigation to determine whether there were more desirable TBA programs than that under which Atlantic was then operating. CX 99 is the form of letter dated January 19, 1948, from Atlantic to the rubber companies named therein, which was one of the first steps in that investigation. CX 1 is a copy of the letter in such form sent to Goodyear.

"3.3 After having initially declined to make a proposal in response to Atlantic's inquiry of January 19, 1948 (CX 1A-3A), Goodyear expressed its willingness to do so in a letter dated May 4, 1949. CX 4 is a copy of that letter.

"3.4 Atlantic made sales of TBA products to its dealers and distributors in the years 1949, 1950, and 1951 as indicated on CX 193.

270 "4. Introduction of Sales Commission Program on Test basis.

"4.1 In or about January, 1950, Atlantic decided to accept the sales commission proposal submitted by Firestone on a test basis in three districts, namely, Newark, Wilmington and Erie. The territory included in each of these districts is shown below:

Newark: Northern New Jersey, comprising all of Sussex, Warren, Passaic, Bergen, Morris and Hudson Counties; the northern three-quarters of Hunterdon, Somerset and Middlesex Counties; and the northeastern half of Ocean County.

Wilmington: All of Delaware; those portions of Virginia and Maryland on the Delmarva Peninsula; and a small portion of Pennsylvania adjacent to Delaware on the north and west and extending to the Susquehanna River.

Erie: The northwest corner of Pennsylvania, comprising all of Erie, Crawford, Mercer, Warren, Venango, Forest, and McKean Counties; the northern half of Clarion and Elk Counties; and the northwest corner of Cameron County.

"4.2 On March 17, 1950, Atlantic was notified by Firestone that it would not undertake the test program in Newark, although willing to do so in the other two districts. Atlantic decided, nevertheless, to proceed with

271 a test of the sales commission program in Newark and in May, 1950, after weighing the proposals of Goodyear and U. S. Rubber Company, chose the Goodyear proposal for this district. CX 119A-B, 128A-B, and 129 are Atlantic inter-office correspondence relating to this decision.

"4.3. CX 104 is the letter agreement dated March 30, 1950, which was entered into between Atlantic and Firestone in connection with the test program. CX 106 is an amendment to that agreement extending it to cover the Eastern Pennsylvania, Western Pennsylvania and South-

ern Regions of Atlantic, effective March 1, 1951. CX 105 is an amendment to the agreement dated January 12, 1954. CX 105C is another amendment to the agreement dated November 3, 1954. These are all the amendments to date.

"4.4. Operations under the agreement with Firestone can be considered to have begun in Wilmington on April 4, 1950, and in Erie on March 30, 1950.

"4.5. CX 121 is a draft of a proposal agreement between Goodyear and Atlantic, including Exhibit A thereto, which was not executed. CX 122 and 123 are correspondence between the parties referring to changes in this draft. CX 127-A-H comprises two Goodyear documents apparently sent to Atlantic for information. CX 13 is the contract as finally agreed upon, which (although dated June 1, 1950) was executed and delivered in December 1950. CX 124 and 125 are the letters transmitting the 272 executed counterparts of the agreement. CX 126 is an amendment to the agreement extending it to cover the Philadelphia-New Jersey, New York and New England Regions of Atlantic effective March 1, 1961. CX 126C and 126D are further amendments to the agreement dated July 7, 1954, and September 15, 1954, respectively. These are all the amendments to date.

"4.6 Operations under the agreement with Goodyear began in Newark on June 12, 1950. CX 130 sets forth the accounting procedure in connection with this operation, which is essentially the same as the procedure currently in effect in the three regions where Atlantic promotes the sale of Goodyear TBA. CX 131 sets forth Atlantic's recommendation as to battery charging equipment in the Newark District, which is essentially the same as its recommendation in all regions where it promotes the sale of Goodyear TBA.

"5. Adoption of Sales Commission Program on Company-Wide Basis.

"5.1 Subsequent to April 1950, progress reports were made purporting to report the number of dealers in the test districts accepting the program and the volume of TBA sales reported by Goodyear and Firestone in the test districts as compared with sales by Atlantic in the corresponding periods of 1949. CX 116B is a copy of one such report and CX 116A is the Firestone letter transmitting the same. CX 194 through 205 are copies of additional reports.

"5.2 In July and August, 1950, Atlantic distributed a questionnaire to 80 percent of its dealers and distributors in the test districts. Of the 600 dealers and distributors to whom questionnaires were sent, about 120 executed and returned them. CX 134 is a copy of the questionnaire form showing in each answer space the total number of dealers and distributors who checked that space on their individual questionnaire, except for questions 3 and 4 from which are omitted those preferences for a combination of two or more sources. No information is available as to the omitted answers to questions 3 and 4 or as to the breakdown between dealers and distributors.

"5.3 In January, 1951, Atlantic considered extending the program to one or more regions. The Regional Managers of the Western Pennsylvania, Eastern Pennsylvania and Southern Regions expressed willingness to participate in this further test and indicated preference for Firestone. The Philadelphia-New Jersey Regional Manager expressed his willingness and indicated a preference for Goodyear. (CX 158 is an inter-office letter from the Manager of this region relating to this general question.) Accordingly, Atlantic made arrangements with Firestone and Goodyear for a test in these four regions. On February 14, 1951,

Lee Tire and Rubber Company, failing to obtain a long-term contract with Atlantic covering the other two regions, canceled its contract effective March 1.

This precipitated the decision to adopt the sales commission plan for all six regions. In the light of this decision the New York and New England Regional Managers expressed a preference for Goodyear, and Atlantic arranged to extend the coverage of its contract with Goodyear to those regions as well as the Philadelphia-New Jersey region and to extend the coverage of its contract with Firestone to its other three regions. There is no formal record of Atlantic's informing Goodyear as to the regions covered by Atlantic's sales commission contract with Firestone or informing Firestone as to the regions covered by Atlantic's sales commission contract with Goodyear, but this soon became a matter of common knowledge in the industry.

"5.4 CX 135-A-C is apparently a record of a meeting of the Regional TBA Coordinators held sometime prior to February 14, 1951, to review the steps to be taken in regions where the sales commission TBA plan was to be adopted. The steps actually taken varied considerably from region to region, but followed the general outline recorded. CX 155 is the 1951 Sales Plan for the New York Region which was in preparation at the time of the decision to adopt the sales commission program in that area. CX 154 is an inter-office letter from R. W. Reed, administrative assistant to D. T. Colley, to S. J. Heideman and others forwarding the plan for comments. CX 157 is a letter, written after the decision to adopt the sales commission program in New York, from H. K. Paxson, 275 assistant to S. J. Heideman, to the Manager of the New York Region, commenting on the plan and pointing out changes required by the adoption of the sales commission program.

"5.5 CX 149 is the form of letter sent by D. T. Colley under date of March 1, 1951, to all Atlantic sales personnel announcing adoption of the sales commission program.

CX 150 is the form of letter on the same subject sent by D. T. Colley under the same date to all Atlantic dealers. CX 148 is an inter-office letter dated February 27, 1951, transmitting the foregoing form letters to Mr. E. R. Cox, Manager of Atlantic's Sales Promotion Section, with instructions that they be printed and mailed promptly. On August 28, 1952, a copy of CX 206 was sent to every Atlantic dealer, and thereafter and until July 1955 a copy of this letter and CX 150 was given to each new Atlantic dealer. In July 1955, a copy of a similar letter (CX 207) was sent to every Atlantic dealer and since that date has been given to each new Atlantic dealer.

"5.6 CX 136 is a letter from S. J. Heideman to D. T. Colley written three weeks after the adoption of the sales commission program and reporting on the transition to the new sales method.

276 "6. Transition to Sales
Commission Program

"6.1 In 1950, when the test program was initiated, Atlantic turned over to Firestone and Goodyear lists naming all Atlantic dealers and distributors in the Erie and Wilmington and the Newark test districts, respectively, who to its knowledge handled TBA to any extent and commenced solicitation of these prospects to promote sales of the recommended brand of TBA. Shortly after March 1, 1951, Atlantic turned over similar lists of dealers and distributors and began similar solicitation in the balance of its regions. CX 173-175 are the only remaining records relating to the transmittal of such lists to either Goodyear or Firestone. Goodyear Form G-1209 and Firestone Form S-757, respectively, were prepared for the dealers and distributors named on the lists, and with rare exceptions Goodyear and Firestone approved the payment of commission on purchases of such dealers or distributors.

"6.2 Since prior to 1950, Atlantic has recommended to lessees the observance at their stations of the policy respecting signs which Atlantic follows at company-owned and operated stations. CX 132, which was written during the period of the test operation, sets forth this policy and its applications. Upon the adoption of the sales commission plan, Atlantic's Service Station and Sales Development Committees approved the design of Goodyear and Firestone signs recommended for use on Atlantic lessee stations selling Goodyear and Firestone TBA. Goodyear and Firestone then arranged for installation of such signs at stations handling their respective brands of TBA.

"6.3 From time to time Goodyear sign crews reported to Goodyear and Goodyear in turn reported to Atlantic the names of dealers (both lessee and contract) who would not permit Goodyear identification and, where possible, the reasons given for such action. From time to time Atlantic requested and Goodyear supplied supplemental lists of such dealers. Atlantic salesmen then revisited such dealers and attempted to convince them of the advantages of taking on the Goodyear line, if they did not already carry it, and displaying Goodyear identification. CX 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, and 172 are inter-company and inter-office correspondence relating to these activities. Atlantic did not and does not keep records of the identification displayed by its dealers and cannot state how many of the dealers who originally refused to permit Goodyear identification ultimately agreed to display the same.

"6.4 During the first months of the new program Atlantic obtained from Goodyear and Firestone progress reports showing the number of dealers taking on the respective TBA lines and other information. CX 48F, and 208 through 214F are copies of such of these reports as were found in Atlantic's files.

"6.5 When the sales commission program was adopted, Atlantic had outstanding obligations to dealers who had purchased Lee tires and Exide batteries from Atlantic in respect of guarantees which Atlantic had authorized the dealers to make. Atlantic was obligated to reimburse the dealer for his net cost in fulfilling guaranty obligations, i.e., the difference between the dealer's cost of the replacement article and any amount paid by the dealer's customer in the transaction. This net cost was shared between Atlantic and Goodyear or Firestone, as the case might be. The tire company supply points handled the replacement transactions and Atlantic paid the tire company Atlantic's share of the cost. The total amount paid by Atlantic to Goodyear was approximately \$6,637.05 and to Firestone was approximately \$3,500. CX 47A-B and 47C-D are copies of memoranda dealing with the Lee and Exide adjustments, respectively.

"6.6 In 1951 and prior years, Atlantic credit cards specified that "tires, tubes, batteries and accessories" might be charged thereon. For the year 1950 and prior years, the credit card guides, the only instructions to Atlantic dealers on the subject, indicated that the credit
279 privilege was limited to 'new Lee tires and tubes and Exide batteries.' The credit card guide in use in 1951 and 1952 indicated that the credit privilege was limited to tires and tubes, recapping, batteries and automotive accessories 'recommended by Atlantic.' Similarly, on the 1952 credit card which was distributed in October of 1951 and was in effect from December 1951 to December 1952, 'tires, tubes, recapping, batteries, and automotive accessories recommended by Atlantic' were specified as the TBA items for which the credit card would be honored. In 1953 and subsequent years both Atlantic credit cards and the credit card guides have specified that tires, tubes, recapping, batteries and automotive accessories might be charged thereon without any limitation to those 'recommended by

Atlantic.' CX 146 is the minutes of a staff meeting at which Atlantic's present credit card policy was recommended to management. CX 215 through 221 are the credit cards for the years 1950 through 1956 and CX 222 through 225 are the credit card guides for those years. Atlantic keeps no record of TBA credit sales broken down by dealer classes. The estimated numbers of credit card holders for years 1951-1956 are as follows:

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Year	Number of Credit Card Accounts (Estimated)
1951	73,000
1952	82,000
1953	96,000
1954	116,000
1955	130,000
1956	161,000

"6.7 In 1951 certain Atlantic personnel suggested that action be taken to limit the extension of credit to TBA supplied by Goodyear and Firestone, respectively. CX 140-145 relate to this proposal. No action was ever authorized or taken on this suggestion.

7. Supplemental Data

"7.1 Firestone's sales to Atlantic dealers and distributors on which commissions were paid to Atlantic by Firestone and such commissions for the years 1950 through June 30, 1956, are as follows:

Year	Sales on Which Commissions Paid	Commissions Paid
1950 (April thru December)	\$ 458,325	\$ 43,894
1951	3,243,350	299,524
1952	4,349,616	404,948
1953	5,050,381	469,784
1954	4,867,689	452,083
1955	5,562,936	506,199
1956 (to June 30)	2,545,798	234,317

"7.2 Atlantic has no knowledge of any Atlantic records from which the number of dealers and distributors who, from time to time in the past, signed Firestone franchise agreements can be determined. Except when specified on the documents, Atlantic does not know whether the numbers of dealers referred to in the Firestone progress reports are the numbers who became active purchasers of Firestone TBA as distinguished from those who signed Firestone franchise agreements.

281 "7.3 On the dates specified in the left-hand column Atlantic had the following numbers of lessee and contract dealers in the Eastern Pennsylvania, Western Pennsylvania and Southern marketing regions.

	Lessee Dealers			Contract Dealers		
	E. Pa.	W. Pa.	S.	E. Pa.	W. Pa.	S.
March 1950	451	234	249	1854	1341	548
December 1950	468	239	253	1776	1305	476
April 1951	468	244	263	1770	1246	465
December 1951	469	258	261	1739	1113	429
December 1952	484	270	268	1617	1059	366
December 1953	478	284	301	1179	929	318
December 1954	487	298	362	1054	853	191
December 1955	496	312	392	1096	749	134
June 1956	480	317	399	1075	725	121

"7.4 The following table shows for the dates specified the number of gasoline distributors and the approximate number of distributors' service station customers in each of Atlantic's marketing regions:

	March 1950		March 1951		March 1952		June 1956	
	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.
New England	8	*	8	*	7	*	8	151
New York	39	*	40	*	42	*	48	238
Phila.-N.J.	16	*	8	*	5	*	0	0
Eastern Pa.	52	*	53	*	54	*	77	925
Western Pa.	36	*	32	*	32	*	26	410
South	111	*	103	*	96	*	77	1173
	262		244		236		236	2897

* Data unobtainable.

315 Mr. Dias: The following stipulation has been agreed upon by counsel: Counsel for respondent, The Atlantic Refining Company ("Atlantic"), and counsel supporting the complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the complaint in this proceeding, and asked the following questions, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

316 CX 5A

Q. "Identify Neall."

A. In August 1949, F. M. Neall was Manager of Product Sales & Sales Development Division, Domestic Marketing Department, Atlantic.

CX 7

Q. "Identify E. R. Cox, Jr., Leon Serven, W. F. Stotz."

A. As of May 1950—E. R. Cox, Jr. was Manager, Sales Promotion Section, Atlantic. Leon Serven was Assistant Controller, Controller's Office—Domestic, Atlantic. W. F. Stotz was Senior Attorney, Legal Department, Atlantic.

CX 9A-E

Q. "Identify as to date, author, etc."

A. CX 9A-C was prepared by S. J. Heideman at some time prior to Atlantic's decision to test the sales commission plan in the test districts.

CX 9D-E is a separate document which was prepared by S. J. Heideman at some time prior to the commencement of the sales commission test program in the Newark District.

CX 9D

Q. "Identify Sales Promotion Section."

A. See under CX 179D.

CX 29

Q. "Dates."

A. Letters in this form were sent out by Atlantic 317 in the New England, New York, and Philadelphia-New Jersey Regions, except in the Newark, New Jersey District, on or about February 20, 1951.

CX 35 and 36

Q. "Develop further data re Schrader inventory."

A. Further data are unobtainable.

Q. "Is Schrader part of the Goodyear TBA line?"

A. Yes.

CX 39

Q. "Was document enclosed with CX 38?"

A. No.

CX 47B

Q. "Obtain copy of Atlantic-Lee Guaranty Forms."

A. A copy of that form is attached. (CX 47E.)

CX 48A-F

Q. "Who do TBA Bulletins go to?"

A. TBA bulletins are directed to Atlantic's TBA Coordinators in the various regions.

Q. "Is copy sent to Goodyear?"

A. Only occasionally.

Q. "Who are Automotive Missionary Men? Atlantic Refining Co. or Goodyear or both?"

A. They were employees of Goodyear.

Q. "What fan belts did Atlantic sell prior to commission plan?"

A. "Thermoid" brand, made by the Thermoid Corp., Trenton 8, N. J.

318 Q. "Review Progress Report."

A. See part 6 of stipulated testimony of Atlantic personnel.

CX 84A, D

Q. "Check current regions, etc."

A. There have been no material changes in the territories of the regions since the exhibit was prepared.

CX 100A-C

Q. "Distribution of document."

A. This was a memorandum for Mr. Heideman's file and, as far as can be ascertained, was not distributed to anyone else.

Q. "Describe Sales Promotion Department."

A. See under CX 179D.

CXID 101A-Z20

Q. "Origin, etc. Is basic data available?"

A. Reports are available for interviews believed to have been conducted in Boston, Mass., Fall River, Mass., Johnstown, Pa., Philadelphia, Pa., Pittsburgh, Pa., and Trenton, N. J. The Atlantic employee witness having the best knowledge of the origin and method is J. L. McIntire.

CX 102A

Q. "Identify J. M. McIlvain."

A. In August 1949, J. M. McIlvain was Chief Industrial Engineer, Industrial Engineering Department, Atlantic.

CX 104A-C

Q. "Firestone agreement, 3/30/50. Review C, D, 319 CE, DE, B and E classifications."

A. The agreement describes such classifications correctly.

CX 107

Q. "Identify Keen, Stotz, and Johns."

A. In February 1950—

William Keen was Manager, Operations Division,
Domestic Marketing Department, Atlantic.

William F. Stotz was Senior Attorney, Legal Department, Atlantic.

Roy W. Johns was General Counsel, Atlantic.

CX 108A-J

Q. "Origin, date of meeting."

A. This document is believed to have been prepared by S. J. Heideman for presentation at the meeting of March 17, 1950, at which the persons listed on CX 109 were in attendance.

Q. "Explain antifreeze policy (CX 108I)."

A. Atlantic had decided to continue to sell antifreeze on a purchase and resale basis.

CX 109A-I

Q. "Explain policy on 'close out' merchandise (CX 109B(b))."

A. See paragraph 2.14 of stipulated testimony of Atlantic personnel.

Q. "Identify Mr. Stockton."

A. As of March 1950, William Stockton was Credit Manager, Domestic Marketing Department, Atlantic.

320 CX 109H

Q. "Obtain lists of dealers and distributors and maps and 1949 dealer TBA volume furnished Firestone for Wilmington and Erie districts."

A. The data furnished to Firestone for the Wilmington and Erie Districts cannot be located. According to other records, the 1949 dealer TBA volume in the Erie District was \$343,028 and in the Wilmington District was approximately \$200,000.

Q. "Check dates of dealer meetings and starting date of Firestone program."

A. The indoctrination meeting for Atlantic personnel in the Erie District was held on March 30, 1950, which can

be considered the starting date of the program in that district. Dealer meetings were held shortly thereafter.

CX 110

Q. "Identify SJH."

A. In March 1950, S. J. Heideman was Manager, TBA Section, Atlantic.

CX 111

Q. "Identify SJH and W. J. Griffiths."

A. In April 1950—

S. J. Heideman was Manager, TBA Section, Atlantic.

William J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

321-A CX 112, 113

Q. "Check origin, etc., and termination dates."

A. It cannot be determined by whom these documents were prepared.

The arrangement was terminated as indicated under CX 139A-B.

CX 114A

Q. "Obtain list, referred to under (3), of Firestone District Managers and District Offices."

A. The list referred to cannot be found.

Q. "Obtain Forms S-468."

A. A copy of this form is included in the data which were furnished in response to List C, par. 8(h).

CX 114B

Q. "Check accounts classifications on which commissions are paid."

A. The classifications in Par. 7 of CX 114B are correct as stated, except that the outlet designations have been changed as indicated by paragraph 2.1 of the stipulated testimony of Atlantic personnel.

321-B CX 114D

Q. "Identify personnel listed."

A. As of May 1950—

B. M. Boor was Manager, Western Pennsylvania Region, Atlantic.

Leon Serven was Assistant Controller, Controller's Office—Domestic, Atlantic.

S. J. Heideman was Manager, TBA Section, Atlantic.

J. C. Rigby was in the Auditing Department, Atlantic.

J. M. McAllister was in the Sales Statistical Section, Accounting Department, Atlantic.

J. P. Miller, Jr. was General Auditor, Atlantic.

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

C. P. Mumma was Manager, Sales Group, Eastern Pennsylvania Region, Atlantic.

G. A. Fearn was TBA Coordinator, Eastern Pennsylvania Region, Atlantic.

R. S. Zinn was Manager, Wilmington, Delaware District, Domestic Marketing Department, Atlantic.

CX 115

Q. "Identify writer."

A. This document was probably written by E. E. Sickles, then an Assistant Chief Accountant in the Philadelphia Sales Accounting Division of the Accounting Department, Atlantic.

Q. "What are 'O' Type dealer supply points referred to?"

A. "'O' Type dealer supply point" is a Firestone designation for independently owned and operated Firestone dealers acting as supply points.

Q. What was the name of the company?

93 A. Goodyear and Atlantic.

Q. And approximately how many dealers were present at that meeting?

A. Well, I guess fifty or sixty.

Q. And after you were informed of the change-over as you call it, did you then begin to purchase Goodyear TBA?

A. Oh, yes.

By Mr. Kelaher:

Q. Did you observe whether other dealers changed to Goodyear TBA after the meeting referred to?

A. Yes.

Mr. Thompson: I object unless the other dealers which Mr. Kelaher is referring to are specified.

94 Mr. Mason: I object also.

Hearing Examiner Kolb: You may answer that.

By Mr. Kelaher:

Q. You may answer it.

A. Well, certainly I saw the merchandise around in other stations.

Q. And did you see the Goodyear TBA line go into the other stations?

A. Oh, sure.

Mr. Mason: I move to strike unless the stations are identified.

Mr. Kelaher: Your Honor, that is a matter of cross-examination.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. From whom did you begin to purchase your Goodyear TBA line?

A. From the Company distributor who was Ed Parris.

Q. At the time of the switch-over were any steps taken to identify your station with Goodyear signs of any type?

A. Yes, I just recall them putting these things across the window, I guess Decals or what have you, across the entire front of the building and re-sleeved a lot of my fan belts and hoses and identified them.

Mr. Mason: I move to strike the answer unless 95 "they" are identified.

The Witness: Goodyear re-sleeved the fan belts.

By Mr. Kelaher:

Q. Would you explain what is meant by re-sleeving?

A. Well, there was some thermoid belts and the sleeves were taken from that and Goodyear sleeves were put on it.

Q. You mean there was a change of brand name from thermoid to Goodyear?

A. That is right.

Q. Mr. Chambers, after March of 1951, did you purchase any TBA from suppliers other than Mr. Parris?

A. Yes.

Q. Would you please state the names of some of these jobbers at least from whom you purchased and the type of products you purchased?

A. I would say Chester Auto Parts.

Q. Will you please give the city where they are located?

A. Chester.

Q. Pennsylvania.

A. Right. Mac's Products is one.

Q. Is Mac's Products a line of chemical or waxes?

A. Chemicals and waxes.

Q. That would be an accessory item, is that right?

A. That's right. Of course, C. A. Powers, on recapping, snow grips.

96 Q. Where is C. A. Powers located?

A. Chester.

Q. What is C. A. Powers?

A. A Goodyear distributor.

Q. Did you purchase new tires and tubes from C. A. Powers?

A. Yes.

Q. In quantity or—

A. Never much quantity, no.

Q. Where was the bulk of your new Goodyear tires that you purchased?

A. Purchased from the distributor.

Q. And you say you had recapping done by C. A. Powers?

A. Right.

Q. Did Mr. Parris have recapping facilities?

A. No, not at that time.

Q. And would you name some of the other companies from whom you purchased?

A. Hymen Stein, who was in Chester, Zerex and Zerone.

Q. They are anti-freezes, are they not?

A. That is right. Then Auto Parts and Radiator Company in Chester, we purchased all polishes.

Q. And accessories. You can just identify them as accessories, tires, and batteries.

A. Just accessories.

97 Q. Were there any others you can recall?

A. Not in 1951.

Q. Well, from then on, from then until you left—

A. Well, V. J. Auto Parts in Sharon Hill, accessories, and Barrodin Auto Supplies in Philadelphia.

Q. Is that B-a-r-r-o-d-i-n?

A. That is right.

Q. And did you purchase a product known as Barsleak from any of these jobbers?

A. Yes, sir.

Q. Who did you purchase that from?

A. Barrodin.

Q. That's an accessory item, is it not?

A. Yes.

Q. What products did you purchase from V. J. Auto Parts?

A. Why, usually I would pick up items that I would have to have immediately and some accessories when there was a deal involved.

Q. Did you purchase Barsleak from V. J. Auto Parts?

A. I believe so.

Q. From whom did you purchase the bulk of your accessories?

A. The distributor, Ed Parris.

Q. Were any comments ever made by Atlantic representatives concerning your purchases of accessories from other than Ed Parris?

98 A. Yes.

Q. Would you please state some instances?

A. Well, I mean, there is the one that is the greatest in my memory right now was the Barsleak, and of course Joe Connelly was salesman at that time, and Joe would pick it up any say, "What are you doing with this," and he would set it back down.

By Mr. Kelaher:

Q. Were any comments other than the one referred to made by Atlantic representatives concerning the purchases of TBA from local jobbers other than Ed Parris?

Mr. Thompson: I object to the form of the question. The only testimony so far has been with reference to something called Barsleak which I have never heard of.

Mr. Mason: Objection.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You may answer.

A. Why, yes, there was great criticism, shall I say,
99 in reference to outside merchandise.

Q. Who made these criticisms?

Mr. Mason: Just a moment, I move to strike the statement, the witness' answer, unless the statement is clarified, it is too general.

Hearing Examiner Kolb: I understand what Mr. Kelaher is doing, he is clarifying it.

Mr. Kelaher: Would you please read back the last question?

(The stenographer read back the last question as follows:

"Q. Who made these criticisms?")

The Witness: Why, salesmen who represented the company.

By Mr. Kelaher:

Q. Which company?

A. Atlantic.

Q. Would you name some of the salesmen, if you please?

A. Of course, I only had about four during my time of dealership with Atlantic.

Q. Who were they?

A. There was Joe Connelly, Joe Muldoon, and Steve Petrisson. There were three and the first was Al Vayda.

Mr. Mason: If your Honor please, I would like to move to strike the entire line unless the criticisms as such
100 are identified. We are still talking in terms of a very general word; it is meaningless.

Hearing Examiner Kolb: I assume the following series of questioning will bring it out.

Mr. Mason: I want it to be understood I am placing an objection and we will move to strike if it isn't brought out.

By Mr. Kelaher:

Q. Mr. Chambers, did the men or did any of the men you have mentioned make such criticisms?

A. You were always reminded that on check-out.

Q. What is meant by check-out?

A. Well, they were going—when you left the business, in other words, when they expired your lease or when they cut your lease, they would only accept that merchandise that they sold or handled. The outside merchandise would not be accepted at all.

Q. In other words, if your lease expired, are you stating that Atlantic would not buy back any outside merchandise you purchased in the TBA line?

A. That is right, from outside sources if they did not handle it.

Q. And where did these conversations take place between the Atlantic salesmen and you?

A. Many times over a cup of coffee and sometimes 101 out in the driveway.

Q. Would it generally be a private conversation?

A. If it was to be of that private nature, yes.

Q. Well, when it was a criticism, was it generally of a private nature?

A. It was never done openly.

Q. What was your experience with respect to advertising of TBA when you—

Mr. Mason: Pardon me, have you left the line that has to do with criticism?

Mr. Kelaher: We covered that quite entirely.

Mr. Mason: I move to strike because the criticisms have never been identified. All we have is a very general characterization and statements that have been made.

By Mr. Kelaher:

Q. Mr. Chambers, you named a number of Atlantic salesmen—

Mr. Mason: I would like to have a ruling.

Hearing Examiner Kolb: The criticism which has been referred to was the statement with reference to the non-return of products which were not Goodyear. The objection will be overruled and the motion to strike denied.

102 By Mr. Kelaher:

Q. Mr. Chambers, with respect to advertising in your station, what was your experience during your time as an Atlantic lessee dealer with respect to the advertisement of TBA products?

A. Well, as a dealer, you bought a package deal; I mean you paid for a package deal on advertising and of course they handled it for you.

Q. By "they" you mean who?

A. Atlantic handled the entire thing on a month-to-month basis; in other words, you bought it as a package deal.

Q. What products did you have advertised in your station?

103 A. All products sponsored by Atlantic, Goodyear.

Q. Did you advertise products not sponsored by Atlantic in the Goodyear TBA line?

A. Oh, no.

Q. Did you say no?

A. No.

Q. Why did you not advertise such non-sponsored products?

Mr. Mason: I object to the form of the question.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You may answer.

A. Well, because it wasn't handled by the company

and it wasn't included in the package advertising, and of course it just wasn't done.

Q. Did you ever attempt to advertise non-sponsored TBA?

A. Only through, shall we say, stickers or Decals on various things at the station.

Q. Was any comment ever made by such advertising, non-sponsored TBA by Atlantic representatives?

A. In reference to those advertisements?

Q. Yes.

A. Yes, sir.

Q. What comments were made?

104 A. To take them off.

Mr. Thompson: That is objected to unless the person who said that is identified.

By Mr. Kelaher:

Q. Will you please state the person who said that, from Atlantic?

A. Mr. Arnholt.

Q. Did you use credit cards at your station?

A. Yes, sir.

Q. Atlantic credit cards?

A. Yes, sir.

Q. And what products were you able to sell or what products did you sell on Atlantic credit cards?

Mr. Thompson: I object to that.

By Mr. Kelaher:

Q. What TBA products?

Mr. Thompson: Let's have the question read back.

(The stenographer read back the question as follows:

"Q. What products were you able to sell or what products did you sell on Atlantic credit cards?")

Mr. Thompson: It is obviously a double question.

Hearing Examiner Kolb: Reframe your question.

By Mr. Kelaher:

Q. What brand of TBA products did you sell on Atlantic credit cards?

105 A. Well, on the credit cards there was some flexibility. Now on the polishes and what have you, why, we never ran into any trouble on the small items. But like most businesses you could not expect Atlantic who was handling Goodyear tires to finance or charge Lee or Century, or something else.

Q. You never attempted to charge other than Goodyear on the credit cards?

A. Not on the big items; no, sir.

Q. What type of uniform did you normally wear at the station?

A. Well, we had a rented one that we paid for from—gee, I don't remember who it was.

Q. Was there ever a time when you did not wear the uniform you purchased?

A. There were many times; we got three suits a week on the rented setup and there were times when the suits were dirty and they were maybe on a holiday and something came in, of course.

Q. Did you ever change your type of cap?

A. Yes, once. I was never much for wearing a cap except these peak kind that service station people have.

Q. What kind did you wear?

A. I bought a leather hat, it's used by sportsmen; and at the time I bought a red one.

106 Q. Was any comment ever made by an Atlantic representative with respect to your uniform?

A. Yes. Mr. Arnholt asked me was I a gunner.

Q. Would you explain the incident?

A. Well, he apparently did not like the hat on me. He, with Mr. Connelly and Mr. Sanborn on the morning—

Q. All of Atlantic?

A. Yes, the hat was taken from my head and thrown in the waste paper basket.

Q. Who took the hat off your head?

A. Arnholt.

Q. What happened after that?

A. He took it out of the waste paper basket and put it back on my head again.

Q. At your request?

A. Yes.

Q. Did you keep books and records of your service station operation as an Atlantic lessee dealer?

A. Daily.

Q. Were those records inspected by an Atlantic representative?

A. Yes, I gave them full freedom to check my books and records at any time.

Q. Did that include inspection of your TBA purchases?

A. Anything that was in the book, sir, they were 107 free to check.

Mr. Kelaher: Mr. Examiner, I have a document which I would like to identify as Commission's Exhibit 274 for the reason that other documents have been identified, have been assigned numbers up to that number which will be put into evidence tomorrow.

Hearing Examiner Kolb: All right.

(Document identified as Commission's Exhibit 274.)

By Mr. Kelaher:

Q. Mr. Chambers, I hand you Commission's Exhibit 274 and ask you to state what that is.

A. Well, this is a letter that was sent out by Atlantic.

Q. Would you please give us the date?

A. This is October 14, 1954.

Q. And who was it from?

A. It is A. R. Sanborn, District Sales Manager, Philadelphia and Suburban.

Q. And would you please read the letter?

A. "Mr. John Chambers, Chester Pike and Clifton Avenue, Sharon Hill, Pennsylvania.

"Dear John: Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

"This is the kind of job which makes us all feel very happy and it certainly is an important factor in running 108 a profitable service station.

"Keep up the good work!

"Cordially yours"—Mr. Sanborn.

Mr. Kelaher: Strike the word—I think the word "feel" should be stricken, it does not appear in the letter.

Mr. Mason: Are you going to offer the document in evidence?

Mr. Kelaher: I have identified it. Are you making an objection?

Mr. Mason: No; simply as to its admissibility as to Goodyear. Goodyear is a stranger to this transaction.

Mr. Kelaher: I move that Commission's Exhibit 274 be received in evidence.

Mr. Thompson: No objection on behalf of Atlantic.

Mr. Mason: Goodyear objects because this is obviously a transaction that is between a third person and the witness and I do not believe the document will be admissible.

Hearing Examiner Kolb: The objection will be overruled.

(COMMISSION'S EXHIBIT 274 received in evidence.)

By Mr. Kelaher:

Q. Mr. Chambers, was it customary for the Phantom Customer Inspector to call at your station during your years as an Atlantic lessee dealer?

A. I think the Phantom was something new; I mean, 109 Atlantic was always service-minded and of course service and cleanliness is the basis of good business.

Through these inspections, they kind of kept the boys on their toes. Many times they would receive a bonus such as a dollar or a certificate for a dollar, for the service rendered, and the merchandise displayed at the location and the cleanliness of the location. Of course, the 290 there is based on service, display, and cleanliness.

Q. Did you know or did you have any reason to know when the Phantom Customer Inspector was in your station?

A. No.

Q. Were you ever advised in advance of his appearance?

A. No, not on this chap; but some of the other ones we used to get a chain letter or by a phone.

110 By Mr. Kelaher:

Q. Mr. Chambers, you stated that you were an Atlantic lessee dealer until November, 1954. Would you please explain why you did not continue as an Atlantic lessee dealer after that date?

A. Well, because they cancelled my lease; that is the reason I wasn't a dealer.

Q. Would you explain that, please?

A. Well, I mean, I kind of think a lot of things led up to it. I just don't know exactly where to start.

Q. Well, let me ask you this: You received a letter dated October 14, 1954. Did any events transpire after that date?

A. When I received that letter, I was on my way out then.

Q. You were?

A. Yes.

Q. Why did you think you were on your way out then?

111 A. I was told I was on my way out.

Q. Would you please explain that?

A. Yes, I will. Atlantic was going on a commission

basis with gasoline, which was fixing price, shall I say. We had to buy the gas or did not buy it, they put it in, stuck their tanks in and then we were charged with what we sold at a price. The salesman who was Steve Petrison made the rounds and according to my memory, he told me that he called on ten locations and out of ten locations he got five acceptances for the commission basis and five refusals. The five refusals were in an area, a given area of Sharon Hill, Darby, Collingdale, Glenolden, and they were not going to put up with that any longer.

Q. Who wasn't going to put up with it?

A. The salesman.

Q. Referring to the Atlantic salesman?

A. Yes. And we were going to have to take the commission deal and at that time he told me it did not make any difference whether I took it or not, my lease wasn't being renewed.

Q. Please go on.

A. I mean—

Q. Did he make any statement to you at that time?

A. Well, I said, "Is that it," I mean, "Are you serious?" He said, "Yes, dead serious." "Of course, 112 John," I said, this isn't my decision, it is the decision that was handed down from top level." I said, "It is rather cold and sudden, wouldn't you say?" He said, "That's the way it is, we are going to bust this up one way or another."

Q. What was he referring to?

A. A clique; that is, dealers that were trying to stay together. Can I go back a little bit?

Q. Yes, go ahead.

A. There were times in our business when we kind of felt as dealers we ought to make a few decisions ourselves. Many of the decisions were handed down by top level in the office, I believe, and maybe their intentions were good and

maybe they were not. Nevertheless, we feel as dealers that we should operate as independent business men and make some decisions ourselves. We pay the rent and we know we have the location and we know we have obligations to meet. And many times the company through the competition factor which exists today even still would not go along with us to meet the tank-wagon price of the competitive deal.

Q. I see.

A. In other words, we will say a company would sell a tank wagon at 19.9 and we would still charge 21.9 on the tank wagon, yet we were expected to meet competition.

Q. I see. Even though the competitors had a lower price.

A. Yes, many of the dealers got together and we 113 said, "Look, we will meet competition when the company comes along with us and gives us a helping hand." At that time they had a zoned area, it ran like the Chinese Wall. This guy got it on this side of the fence and this guy did not get it on this side of the fence.

Q. By getting it, you are referring to—

A. A subsidy they gave, and while we tried to band together and hold our price until the company did something to help us. There were times when I had a cardboard sign or an "A" sign that we have out in front that we use for advertising purposes of either Goodyear tires or Goodyear batteries, or Atlantic Hi-Arc. You turn the face around on those and we painted the sign on them—26.9 or 23.9. I was asked by Mr. Arnholt to get two professional four by eight signs and this involved quite a hassle because I checked into the price of the outside plywood and it ran me too much money. So I of course did not get the signs. So he said that when I told him I refused to get the sign, he said that—that is Mr. Arnholt—said to remember this conversation in the future because one day it would come

up. So I kind of think that as far as my association with Atlantic which—

Q. Mr. Chambers, I want to keep you on this. After your conversation with Mr. Petrison did you go to Atlantic or to an Atlantic representative?

114 A. No, I asked through Steve Petrison to have an interview with Mr. Sanborn, to try to reason it out; I mean, I had moved to Sharon Hill with the thought of staying in Sharon Hill.

Q. I see.

A. I joined a service club and I was quite active in and around the town to try to put things on their feet up there and make a dollar myself. Of course, I had a lot at stake. At that time I was having family trouble at home and of course I was—everything piled up at once.

Q. At this time did you discuss the matter with Mr. Parris?

A. Yes; I, of course went to Ed because Ed to me in the years I had been with Atlantic, of course I started with him as a—

Q. Excuse me, Mr. Chambers, what was the substance of your conversation with Mr. Parris?

A. I asked, what in the world happened, what could I do. He said, "Jack, you have been turned in by three dealer salesmen for buying outside merchandise." I said, "Who?" He said, "Connelly, Muldoon, and Petrison" turned me in for buying outside merchandise.

Mr. Thompson: I object to this and ask it be stricken, your Honor. It is totally hearsay.

Hearing Examiner Kolb: He is stating a conversation he had.

115 Mr. Thompson: No, sir; he is stating what somebody said, somebody else said.

Mr. Kelaher: No, he is not; he is stating the substance of his conversation with Parris.

Mr. Thompson: The only possible relevance would be that it is a repetition of what Mr. Parris said and what somebody else said. This would be clearly within your double hearsay ruling.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Kelaher:

Q. About what approximate time did your conversation with Mr. Parris take place? I am referring to the month.

A. It would be in—I am only guessing, I cannot be accurate, I would say it was around the first week in November.

Q. And you state that you left in November of 1954. How did that come about?

A. That would be—actually, I would be in October when I was there rather than November 1st, it was the 13th of November I was checked out...

Q. Mr. Chambers, did Atlantic salesmen take TBA orders from you?

A. Yes.

Q. And, Mr. Chambers, when you checked out, as 116 you say, November of 1954 did you have an inventory TBA on hand?

A. Did I have an inventory?

Q. Yes, an inventory of TBA on hand?

A. Oh, yes.

Q. And did you or did Atlantic purchase any of that inventory?

A. Well, the purchase was to include everything that Atlantic sold and if the incoming dealer wanted to buy the outside merchandise they would not stop him, but that was a personal check between the incoming dealer and myself.

Q. With respect to TBA, what did Atlantic re-purchase from you or purchase from you, rather?

A. Well, only that merchandise that they handled.

Q. Are you referring to the Goodyear TBA line?

A. That is right.

Q. Mr. Chambers, referring back to the time, to the dealer meeting when the switch-over to the Goodyear TBA line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?

A. No, there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

Q. Mr. Chambers, did Atlantic periodically hold so-called dealer meetings?

A. Yes, sir.

117-A Q. Did you ever attend any of those meetings?

A. Fairly near all of them.

Q. Was TBA ever mentioned at such meetings?

A. Well, yes; it would come up to that point; I mean, many of them were sales promotional meetings.

Q. Who would be present at such meetings of that type?

A. Well, the head of sales.

Q. For Atlantic?

A. Yes.

Q. Would anyone from Goodyear ever be present?

A. Only if a new product was coming out for something.

Q. They would be present on occasions?

A. Oh, yes.

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: We will take a short recess at this point.

(A short recess taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Thompson.

Q. Mr. Chambers, when you left Atlantic in November of 1954, you took over the Esso station at 4th and Sproul Streets in Chester?

Mr. Kelaher: Objection as irrelevant.

117-B Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. Did you understand the question?

A. Yes. The address is 9th and Welch.

Q. Is that close to 4th and Sproul?

A. Five squares and one.

Q: What was that again?

A. 9th and Welch.

Q. Would you mind pointing out that location to us on the Chester map?

A. It would be right in this area here, sir (indicating on the map.).

Mr. Kelaher: Mr. Examiner, if counsel is marking the map, perhaps some symbol should be made.

Mr. Thompson: That is my copy, for my information.

By Mr. Thompson:

Q. That is rather a prize station, isn't it?

Mr. Kelaher: Objection, your Honor. He is referring to his present Esso station. It is irrelevant in this proceeding, your Honor.

Hearing Examiner Kolb: The objection is overruled.

Mr. Kelaher: I might add that our direct examination, counsel is going beyond the scope of the direct examination.

118 Mr. Thompson: This is not beyond the scope.

Hearing Examiner Kolb: It may be involved in this.

By Mr. Thompson:

Q. That is rather a prize station, isn't it?

A. No, sir; I would not say so, sir.

Q. You are doing very well there, aren't you?

Mr. Kelaher: Objection.

The Witness: I am doing all right.

By Mr. Thompson:

Q. Mr. Chambers, you also did well for Atlantic in the station you had for them, didn't you?

A. I thought I did, sir.

Q. May I go back a little bit in your history. You started the history of your career in the oil business with the year 1945. That was right after the war, was it not?

A. Right.

Q. Before the war, weren't you a direct employee of Atlantic Refining Company?

A. Just for six months, sir.

Q. But then after the war, when you took the Sharon Hill station, Ed Parris to whom you have referred was the lessee, was he not?

A. That is right.

Q. Now, at the time, was he not what is called the 119 key dealer for the Atlantic Company, distributing Lee tires?

A. That is right, sir.

Q. And you very quickly became the manager of that station, didn't you?

A. Well, not quickly, sir; there was three dealers went out ahead of me.

Q. I meant the Sharon Hill station that Mr. Parris had under the lease, you were the manager of that station.

A. I became manager of that station, yes.

Mr. Kelaher: Your Honor, Mr. Chambers, has referred

to another Sharon Hill station and I think the record should be clear as to the period involved and the location of the station involved.

By Mr. Thompson:

Q. I am now talking, Mr. Chambers, about the year 1945 to 1948 when you were an employee.

A. That is right.

Q. Of Ed Parris at the Sharon Hill station of which you subsequently became the lessee, is that correct?

A. Not of that location; no, sir.

Q. Not the same station?

A. No, sir; I went from there to 2nd and Lloyd.

Q. Yes, but later you did get the same Sharon Hill station.

A. Yes, sir; later I came back.

120 Q. Now, having served as manager for Ed Parris, you were promoted to your own station, weren't you, at 2nd and Lloyd?

A. That is correct.

Q. And that was on Mr. Parris' recommendation, was it not?

A. I think so, sir.

Q. And you had that station from November of 1948 until November of 1952, I think you testified?

A. That is correct, sir.

Q. And you did a mighty fine job for Atlantic there, didn't you?

A. I think so, sir.

Q. Now, at the time of what you call the change-over, you were at the 2nd and Lloyd station, were you not?

A. That is right.

Q. Now, didn't the same Ed Parris become the distribution point for Goodyear?

A. That is right, sir.

Q. And at that time you were very close to him, were you not?

A. I always was.

Q. So that quite naturally you would buy TBA from him whether it be Lee or Goodyear, would you not?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

The Witness: Yes.

121 By Mr. Thompson:

Q. Now, you referred to a meeting that you attended in the spring of 1951 when Atlantic announced to about fifty local dealers that they were going to go on the Goodyear plan?

A. Yes.

Q. I am now going to hand you a photostatic copy—Mr. Kelaher, instead of asking for the original—of Commission's Exhibit 150. Mr. Chambers, I show you a letter dated March 1, 1951 which is a photostatic carbon copy of a letter which is Exhibit 150 in this case and ask you whether you recall receiving that letter.

A. I probably did.

Q. You have no present recollection of it?

A. No.

Q. Well, at the meeting to which you referred did the Atlantic spokesman say to you dealers that the Goodyear plan was something which you could accept or reject and the choice was yours, words to that effect?

A. Probably could have.

Q. As a matter of fact they did, didn't they, Mr. Chambers?

A. I don't recall exactly.

Q. But that was the general sense of the meeting?

A. That was the general sense of it.

Q. Do you recall a similar meeting which was held 122 in August 28, 1952 when Mr. Mulholland became Atlantic's TBA coordinator, a breakfast meeting, with door prizes. Do you remember that particular meeting?

A. No, not offhand, I don't recall it, sir. Could you enlighten me?

Mr. Kelaher: Just answer the question.

The Witness: No, I don't.

By Mr. Thompson:

Q. You did refer to having attended a number of Atlantic dealer meetings?

A. Yes, sir.

Q. Wasn't it pointed out to you on a number of occasions that the acceptance or rejection of a Goodyear plan was up to you fellows?

A. That is right.

Q. Mr. Chambers, having done a good job at 2nd and Lloyd, you were promoted again by Atlantic, weren't you?

A. No, sir, no.

Q. To the Sharon Hill station?

A. No, that is not a promotion, sir.

Q. Didn't you regard that as a promotion?

A. Did I regard it as a promotion?

A. Yes.

Q. If you drop from around 22,000 a month or 23,000 a month down to 9 and 10,000 a month, would you 123 consider that a promotion? I went up there on my ability to build it.

Q. Well, Mr. Chambers, the Sharon Hill station was leased to you at your specific request, wasn't it?

A. That is right; I wanted to move up there.

Q. You wanted to move up there.

A. That is right.

Q. Isn't it true that the 2nd and Lloyd Streets station was on the old Industrial Highway?

A. Well, it is still on the same Industrial Highway.

Q. It is the old Industrial Highway, isn't it, which had been by-passed by the new Industrial Highway?

A. No, sir; it is still the same highway.

Q. But it is just opposite the Ford Assembly plant, isn't it?

A. That is correct.

Q. There is not an awful lot of traffic that goes by there.

Mr. Kelaher: Objection, your Honor.

The Witness: It would not be safe to walk across the street at four o'clock without watching the light, that is how much traffic.

By Mr. Thompson:

Q. When the Sharon Hill station came up, you knew of course that Atlantic was going to reconstruct it, didn't you?

124 A. Yes, I did.

Q. And that was in a very competitive well-traveled area, wasn't it?

A. That is right.

Q. But you were in effect at that time taking over a station which you were just opening, weren't you?

A. Explain that to me, sir.

Q. It was re-opened as a new station, wasn't it?

A. I went in the old location.

Q. At the old location but it was re-opened as a new station.

A. I went through the construction of it, yes.

Q. So when you started to operate that station, you had to build the gallongage up, didn't you?

A. Yes.

Q. You did it very quickly, didn't you?

A. Well, not as quickly as I would have liked.

Q. But Atlantic was very well pleased with the way you handled it, weren't they?

A. They did not indicate so, sir.

Q. How about the salesmen, weren't they all close friends of yours?

A. Well, I think so.

Q. Joe Connelly?

A. Yes, I think so.

125 Q. He had nothing but praise for you, didn't he?

A. Joe always had a good word for me, sir.

Q. Isn't that also so about Muldoon and Petrisón?

A. I can speak only for Joe; I had more contacts with Joe than I did with the other two.

Q. He was the one who was your salesman for the longest period of time?

A. That is correct.

Q. Now, there was certainly never any problems so far as Atlantic was concerned about your housekeeping. You got nice letters from them, didn't you?

A. Well, that letter, yes.

Q. As far as TBA is concerned, you were a star salesman, weren't you?

A. Well, you will have to reclassify "star salesman".

Q. If anybody in the service station business sells TBA at the rate of say thirty dollars for a 1,000 gallons of gasoline, isn't that considered exceptionally high and very good salesmanship?

A. Yes, I think it is.

Q. Isn't that just precisely what you did?

A. I thought I ran figures like that.

Q. You were running very high on TBA, weren't you?

A. I thought I did, yes.

Q. You were operating in an extremely competitive
126 neighborhood, weren't you?

A. Yes, extremely.

Q. The fact Sharon Hill, there are just a lot of competitive TBA outlets within a very short distance, is that not true?

A. Yes, like on any other highway, I think.

Q. Isn't that particular highway sometimes called "Gasoline Alley"?

A. I never heard it referred to as that; the lower end, not that upper end.

Q. Now, you were referred, by the way, to the Red Cap.

A. Yes.

Q. After Mr. Arnholt criticized that, didn't you put up a gag on him by getting some of the other dealers to wear red caps, too?

A. Never, sir; never.

Q. Didn't you do it just as a joke on Mr. Arnholt?

A. Never, sir.

Q. Now, I direct your attention, Mr. Chambers, to the fall of 1954. You testified, I believe, that you had at the Sharon Hill station entered into a series of rather short term leases with Atlantic.

A. I thought—from the time of the new one, they were short term leases, yes.

Q. And those short term leases were during what 127 you fellows called the build-up of the station, weren't they?

A. The construction.

Mr. Kelaher: Objection; it was not identified who those fellows were.

Mr. Thompson: By "you fellow", of course I am referring to the service station operators.

The Witness: I don't know as we had anything to do with it. The leases were brought in from the main offices, we did not write the leases.

By Mr. Thompson:

Q. Of course, you did not write the leases, Mr. Chambers, but you signed them, didn't you?

A. Well, yes, if you wanted to stay in there, you signed it.

Mr. Thompson: I would like to have marked for identification a document entitled, in large letters: "Atlantic", which purports to be a lease of October 1, 1954, between John Chambers and the Atlantic Refining Company.

(The document referred to was marked Atlantic Exhibit Number 1 for identification.)

By Mr. Thompson:

Q. Mr. Chambers, I show you Atlantic Exhibit Number 1 and ask you whether that is your signature on the back of it.

A. Yes, that is mine.

128 Q. Now, may I call your attention to the fact, sir, that this lease runs from October 1, 1954 to the 31st of December of 1954.

A. Yes.

Q. Now, do you recall discussions with Atlantic's representatives prior to the execution of this October 1st lease?

A. Discussions?

Q. Yes, about the terms of your lease.

A. I recall something but as to just what, I don't know. It was as to the rent.

Q. Well, at that time Muldoon was your salesman, was he not?

A. I don't recall, sir.

Q. Well, was it Petrison?

A. It was one or the other.

Q. Well, both of them were very anxious to keep you in that station, weren't they?

A. They were anxious to keep me in it, sir?

Q. Yes.

A. If they were I had no indication of it, sir.

Q. Mr. Chambers, do you recall that you were offered a long-term lease on October 1, 1954 at a higher rental than you had previously been paying?

A. No, I don't recall; if I was I turned it down 129 because of the higher rental setup.

Q. Wasn't your difficulty with Atlantic with respect to the amount of the minimum rent that you would pay under your leases during the build-up phase of this Sharon Hill station?

A. I would say that was about it.

Q. Now, did you ever have any discussions with either Mr. Muldoon or Mr. Petrisson with respect to Atlantic's cost of this Sharon Hill station and the amount of rent which it required to get a fair return from its investment?

A. Yes, I had a few, and I thought a lot of the figures were over rated.

Q. You had been paying \$275 a month minimum rent at the station, hadn't you?

A. I don't recall the figures; if that was what it is, that is it.

Q. May I refer you to the October 1st lease.

A. Yes, if it is on there it must be.

Q. That lease was for \$275, wasn't it?

A. That is right.

Q. That is the rent you had been paying, is that not true?

A. If it is on there I paid it.

Q. Didn't Mr. Petrisson and Mr. Muldoon tell you that in order to get a fair return on the investment the 130 company would require \$322 a month? Does that refresh your memory?

A. Yes, it does come back to me now.

Q. And they did offer you long-term lease for \$322 a month, didn't they?

A. I don't recall, sir; I cannot say.

Q. If that is their recollection, you would not dispute it, would you?

Mr. Kelaher: Objection, your Honor.

The Witness: If I cannot remember, I cannot dispute something I do not remember.

By Mr. Thompson:

Q. Didn't you turn down a further lease of this property because they wanted you to pay \$322 a month?

A. I disputed the rental setup because the gallonage was not—

Q. Do you recall the lease—

Mr. Kelaher: Will you finish your answer?

The Witness: Well, I just don't rightly recall. It seems to me like this was around the 3rd, I think the 3rd or it was to be the third rent increase in less than two years which wasn't giving me, I don't think, a fair chance in getting built to the peak. There was no telling what the peak was there and they were giving me no chance.

By Mr. Thompson:

Q. You, of course, were exceeding your minimum on 131 gallonage, weren't you?

A. No, sir; I was not.

Q. You were not?

A. No, sir. There are price factors there that was in the picture.

Q. Well, I perhaps did not make myself clear. I know of course that is a price war area, is it not?

A. Yes, predominantly a price war area.

Q. There is very strict competition.

A. Yes.

Q. Just from the point of view of the number of gallons

sold, you were exceeding the so-called minimum requirements for the station, weren't you?

A. No, sir; and my records will show.

Q. Had you received a proposition from Esso before the termination of your October 1st lease?

A. Well, when I had my notice, when I was given my notice, of course to look real fast. I had offers from all of the companies, sir.

Q. When you say your notice, what do you mean, sir?

A. When Petrison told me they were not renewing my lease.

Q. But, sir, may I refresh your recollection again. You actually did renew your October 1, 1954 lease, that was in effect on November 13th when you retired from the station, was it not?

A. No.

Q. May I refresh your recollection?

Mr. Thompson: May I ask that this document be marked as an exhibit? For the purposes of better identification, this is called, "Mutual Consent of Cancellation."

(The document referred to was marked Atlantic Exhibit Number 2 for identification.)

Mr. Thompson: Would your Honor care to see this?

Hearing Examiner Kolb: Thank you.

By Mr. Thompson:

Q. Mr. Chambers, I am handing you Atlantic Exhibit Number 2, called "Mutual Consent of Cancellation," and I ask you whether that is your signature on the bottom of that document.

A. That is.

Q. Does this document refresh your recollection with respect to the details of termination of the October 1st lease?

A. Surely if you were told in October you were not

going to have a job in December, what would you do, would you try to find another job?

Q. I think I am asking the questions, sir.

A. What do you want me to say, sir?

Q. My prior question was, whether you did not have 132 a proposal from the Esso Company before you signed the October 1st, 1954 lease?

A. No, sir, not before then.

Q. When did you get the Esso proposal?

A. Why, I got it by phone shortly after I had the notification or I was told that my lease was not going to be renewed in December, and then I got a phone call from a good friend of mine who had this station. And, of course, as I say, other ones moved in, too, and I accepted this one in Chester but it was after this here, because it wasn't until after I was told that my lease would not be renewed when I started to make phone calls.

Mr. Thompson: If your Honor please, I assume I may substitute a photostat of the two exhibits.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: No objection.

Mr. Thompson: That is all the questions, Mr. Chambers, that I have to ask you. Thank you very much, sir.

Mr. Mason: No questions, your Honor.

Mr. Kelaher: I have a few questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Chambers, Atlantic Exhibit Number 1 states that your lease was entered into as of the first day of October, 1954, is that correct?

133 A. Yes.

Q. And did Mr. Petrison give you oral notice that your lease would not be renewed after the signing of the lease?

A. No, it was during this period that this other happened.

Q. In other words, did the lease come before the notice?

A. Yes.

Q. Mr. Chambers, on cross-examination you stated that there were certain rent increases during the period of your operation at the Sharon Hill station, is that correct?

A. That is right.

Q. Will you explain that, please? As I understand it, at that time you were on the three-months lease, is that correct?

A. Yes, sir.

Q. Would you please state how those rent increases came about or the extent of them and so on?

A. Well, I don't remember exactly; it would be difficult for me to say. All I know is that the latter rent increases I felt were unfair until the station really got on its feet.

Q. Would the rent increases be concurrent with the new lease going into effect; for example, would they put the rental in the lease, in other words?

A. The rental was always in the lease.

Q. So the leases would speak for themselves as to 134 the rentals?

A. That is correct, sir.

Q. Do you recall what your first rental was at the Sharon Hill station?

A. Not exactly, no, I thought it was around \$200.

Q. Do you recall the amount of the increase and when it occurred, the first increase?

A. Why, I think—there again. I am not positive, I think it was either \$250 or \$275, I cannot be positive of that.

Q. When was that increase?

A. I cannot say.

Q. Do you recall how many increases there were during the period of your operation?

A. As I said before, it seemed to me as though, on this last lease, that would have been the third.

Q. And the last lease you referred to is Atlantic Exhibit Number 1, I believe. Would you look at that and state whether that was the last lease you signed with Atlantic.

A. Yes, that would be the last one.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No, sir.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

135 (Short recess.)

Hearing Examiner Kolb: The hearing will come to order.

JACK HOFFMAN was thereupon called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you please state your full name and business address?

A. Jack Hoffman,—my home address?

Q. Business address.

A. 5913 Ridge Avenue, Roxborough, Philadelphia.

Q. And the name of your company?

A. Philadelphia Wholesale Distributors, Incorporated

Q. And what is your position with that company?

A. Salesman.

Q. How long have you been with the company?

A. Thirty years.

Q. And you have been a salesman all that time?

A. Yes, sir.

Q. What type of business is the company engaged in?

A. We are wholesale distributors of automotive merchandise.

136 Q. And among the products that you handle, you handle tires, batteries and accessories?

A. In a limited way—we have discontinued tires.

Q. How about batteries?

A. Batteries; we are Exide distributors.

Q. How about chemicals; what do you handle?

A. DuPont, Hollingshead, Simonize, Johnson's, Prestone chemicals.

Q. Now, for the record, will you define chemicals. That is a broad field.

A. Chemicals are polishes, anything pertaining to preservation, finishes on an automobile, paint, touch-ups, removers, solvents.

Q. How about spark plugs and fillers?

A. We carry a complete line of spark plugs and fillers and also other items.

Q. How about belts and hoses?

A. We carry the Gates line in belts and hoses.

Q. All those things other than batteries, are they commonly referred to as accessories?

A. They are referred to in the TBA industry as accessories.

Q. Does your company also handle so-called hard parts?

A. Yes, we do.

Q. And what are included among hard parts?

137 A. Hard parts we would classify as equipment in the operation of a service station and the servicing of automobiles equipment.

Q. Name just a few of those.

A. Well, do you mean manufacturers or the items?

Q. Items.

A. Lubricating equipment, which the service station comprises, and drain pans, oil mixtures, floor jacks.

Q. How about mufflers and ignition parts?

A. We do not carry any automotive parts, no replacements parts.

Q. I see. What type customers do you sell to, Mr. Hoffman?

A. Well, we deal with the service stations and car dealers, independent repair shops, some hardware stores, electrical shops, and sporting goods stores.

Q. And your sales area, the company's sales area, is what?

A. The company's sales area is metropolitan Philadelphia area and that includes Bucks County, Delaware County, Chester County.

Q. Are there other firms similarly engaged in the sale of similar products?

A. Yes, very many of them.

Q. There are many, you say?

138 A. Yes.

Q. How do you rank in the field, do you know?

A. We are one of the key distributors.

Q. How many salesmen does the company employ?

A. We have nine salesmen.

Q. How are they compensated?

A. I cannot answer that, I am on a straight commission basis.

Q. Do you deliver your products that you sell, do you, personally?

A. Our own trucks deliver our merchandise.

Q. How many trucks do you have?

A. I think we have five.

Q. Do they have regular scheduled trips?

A. That is right.

Q. How often do they go out, do you have any idea?

A. We deliver in my territory once and twice a week. In some territories there is one delivery a week and in other parts of the territory, twice a week.

Q. You mentioned your territory, what is your sales territory?

A. The greater part of Delaware Country, south of Haverford Road including West Chester and Chester County.

Q. Do you attempt to sell to service stations?

A. We do sell to service stations.

139 Q. You, yourself?

A. Yes.

Q. And are there any Atlantic stations in your territory?

A. Yes.

Q. Can you give us some idea of how many there are?

A. Well, I could not answer that. I would say in Delaware County, I'm making a rough guess, there should be approximately forty to fifty Atlantic service stations.

Q. And how many of those—do you call on all of those?

A. We did at one time; we do not today. I have about six active, I had eight active Atlantic dealers I would say today.

Q. And there are forty or fifty in your own territory?

A. I would say so, I cannot give you the exact number.

Q. Have you ever attempted to sell to the others?

A. We have sold them over a period of years, yes.

Q. Did you lose those accounts?

A. We drift away from them, I would say. I would not say we lost them, I would say that we drifted away.

Q. You drifted away and for what reason?

A. We could not get enough volume of business from those dealers.

Q. When was that that you formerly sold them?

A. Well, pre-wartime and during the war.

Q. World War II?

140 A. Prior to 1945.

Q. And prior to 1945 you could sell them, is that correct?

A. Yes, we had but very few problems.

Q. And when did you start losing them?

A. Well, I would say when Atlantic established their own TBA setup.

Q. Will you place that, roughly?

A. I would say '45, after the war.

Q. Now, when you were selling to them, you were selling them these TBA products, were you not?

A. That is right.

Q. You say you have about eight active accounts, is that correct?

A. That is right.

Q. What do you sell to those stations?

A. Well, we sell those stations, the lessee Atlantic stations, we sell them mostly merchandise they cannot secure from the TBA jobber.

Q. Such as what?

A. Well, we sell them some chemicals possibly that they don't have; we can sell them lubricants also. There are not too many items. We sell them chamois, possibly, washing materials, items pertaining to lubrication.

Q. You mentioned that you can sell that to the
141 lessee Atlantic stations. Of these eight stations, about how many are lessee stations, do you know?

A. I would say six of them.

Mr. Thompson: I object to that; how can this man possibly know which is a lessee station and which isn't?

Hearing Examiner Kolb: He can answer if he knows.

By Mr. Dias:

Q. Do you know which of these eight are lessee stations?

A. Yes, six of them are lessee stations.

Q. Six of the eight?

A. Yes.

Q. And of those six you sell them the products you just mentioned, is that correct?

A. Right.

Q. What other type Atlantic station is there?

A. Well, then there is an Atlantic dealer who has a garage where he does automotive repairing, where he has gasoline pumps in front of his station.

Q. Would he be a lessee dealer?

A. No, he would not, I do not believe so; definitely not.

Q. How about batteries, are you able to sell any of these stations batteries?

A. Not today, no.

Q. Not today. Have you ever sold them any batteries?

A. Yes.

142 Q. When was that?

A. Some years ago we sold them batteries; I would say ten years ago, twelve years ago.

By Mr. Dias:

Q. How often do you call on these eight Atlantic stations that you sell?

143 A. Weekly.

Q. You call on them weekly?

A. As a rule; maybe we may miss one or two weeks but as a rule they are a weekly call.

Q. Do you go into the station, you go to the stations yourself, is that right?

A. Yes.

Q. And have you observed any advertising on the premises of TBA products other than your own?

A. The Goodyear merchandise primarily, with their decals on the windows and possibly the dealers make up their own signs of sales of Goodyear tires and Goodyear batteries.

Q. And from your own observation have you seen anything in those Atlantic stations other than Goodyear TBA products?

Mr. Thompson: What Atlantic stations are you talking about?

Mr. Dias: We are talking about the eight he sells to.

The Witness: Yes, you will find other products in Atlantic stations other than their regular TBA items.

By Mr. Dias:

Q. Such as?

A. Such as those supplied by the TBA supplier.

Q. Do you know who the TBA supplier is in your area?

A. Yes, very well.

144 Q. Who is he?

A. Ed Parris is one and Ernie Miller is the other one, —Miller's Automotive Supplies.

Q. And do you know where they are located?

A. Yes, I do. Ed Parris' is in Glenolden on McDade Boulevard and Miller's Automotive Supplies is Garrett Road in Upper Darby.

Q. Will you name those eight stations you sell to, Mr. Hoffman?

A. Will I name them?

Q. Yes.

A. Well, do I have to name them? I don't want to involve any of my customers in this. Yes, I will name them, it is all right. Roger Rossi in Upper Darby; John Clark in Havertown; Richard Connor in West Chester; George

Hewitt in West Chester; Floyd Mohnney in Alden, and John Hanighan in Upper Darby. Those are lessee stations. I have two contract accounts.

Q. Will you name those?

A. Sharon Hill Garage in Sharon Hill and Little's Atlantic Station in Chester Heights.

Q. Did any of these stations open up new during the time that you have been selling that area?

A. Yes.

Q. Were you able to sell—

145. A. All of the lessee stations are new stations.

Q. Have you ever been able to sell them an original stocking order?

A. We did years ago. Some of these are newer dealers and some are older dealers.

Q. Which ones?

A. I would not say stocking orders, no.

Q. When did you first call on these stations after they opened up, did you call on them?

A. I have known these boys for a period of years possibly before they were Atlantic dealers, some of these boys.

Q. When did you get orders from them?

A. At times when I called them.

Q. Was that as soon as they opened up their stations?

A. Well, I would not say; no, I would say that, after they were established.

Q. When you first started selling to them, did they have any TBA supplies in their stations?

A. Yes, they did.

Q. Do you recall the brand names?

A. Well, they were—

Mr. Thompson: I certainly object to that, sir. There is not sufficient identification. You are talking apparently about stations scattered over the whole metropolitan area.

146 Mr. Dias: He is talking about the six or eight lessees.

The Witness: I am talking about six customers.

Mr. Thompson: The last prior question referred to contract dealers. Mr. Dias, would you make it specific, so we can follow.

By Mr. Dias:

Q. Let us refer only to these lessee dealers of yours. Let us go down the list.

Mr. Thompson: May I ask whether the last question has been answered?

Mr. Dias: That was my impression.

Mr. Thompson: If it did, I have no objection; but if it did not you are running the entire metropolitan area Philadelphia and I most strenuously object.

Mr. Dias: We were referring to the lessees referred to by the witness.

The Witness:

Yes.

By Mr. Dias:

Q. As to Roger Rossi, is that correct, how long has he been in business?

A. I would say Roger has been in business for twenty-five years.

Q. Now when did you first start selling him?

A. I sold Roger when he was a partner of Van Le-
147 roy Bond in Upper Darby.

Q. And Clark, John Clark?

A. I knew John when he was one of the Atlantic salesmen and after John got his station we sold him some items.

Q. Will you give me some idea of the volume you sold to the Clark station?

A. Very little.

Q. And you sell that station any batteries?

A. No, sir.

Q. Do you know what brand of batteries he carries?

A. He carries Goodyear.

Q. How about Richard Carr?

A. That is Connor, Richard Connor.

Q. When did you first start selling to him?

A. After he opened his station in Westchester.

Q. When was that?

A. I guess Dick has been there about five years, I would say.

By Mr. Dias:

Q. Did you or did you not sell to this gentleman?

A. Yes.

Q. And when did you first sell to him?

A. After he opened his station.

Q. How soon after he opened?

A. I would say several months.

Q. Was he stocked with other TBA merchandise?

A. Yes.

Q. What merchandise.

A. Well, the regular TBA line that Atlantic carries, Goodyear tires and batteries, chemicals.

Q. Were you able to sell him any batteries?

A. No, sir.

Q. Your next dealer was George Hewitt. Will you tell us when he opened up?

Mr. Thompson: Is that H-e-w-i-t-t?

The Witness: That is right. He has been a customer of mine for a couple of years but there is very little merchandise we sold him.

By Mr. Dias:

Q. Does he handle TBA products?

149 A. Of Goodyear and Atlantic.

Q. And your next dealer, Mr. Mohney?

A. Floyd Mohney.

Q. And how long have you been selling to Mr. Mohney?

A. Well, Mr. Mohney is a customer of ours for thirty some years and I have sold him about fifteen years.

Q. Does he carry TBA products?

A. Yes, Atlantic and Goodyear TBA.

Q. And your next lessee—

A. John Hanigan is a very small account.

Q. Does he handle TBA products?

A. That is right and Goodyear.

Q. Those supplied on the contract stations, you have two. Will you name the first one and tell me what you sell.

A. Sharon Hill Garage, we sell him some items. We sell him oil.

Q. Does he handle TBA?

A. Right.

Q. And what products?

A. Supplied by the TBA Goodyear distributor.

Q. And your next contract man?

A. Erwin Little in Chester Heights. That is one of our better accounts. He has been an Atlantic dealer since 1928.

Q. What do you sell to him?

150 A. We sell him batteries, Exide batteries and he is one of our best accounts.

Q. Do you sell him any accessories?

A. We sell him accessories, Kendall oil.

Q. Does he handle any other batteries?

A. No, sir; he does not.

Q. Now, in addition to these years that you have been in that sales territory, have you ever sold a new station, a new Atlantic station?

A. What type of merchandise are you referring to?

Q. Batteries or accessories?

A. No.

Q. Have you called on any new ones?

A. Yes.

Q. Have you observed other TBA products in the stations?

A. Very few; that is, on the newer stations. I would say those TBA products are those supplied by the TBA distributor primarily, particularly on the new stations.

Q. And what products were they that they were carrying, what brand?

A. The company station?

Q. Yes.

A. Which they purchased from the TBA supplier, you mean?

Q. No, these new stations you called upon.

A. Well, they would carry Goodyear tires, Good-151 year batteries, the duPont line, Johnson, Simonize items that are carried by the TBA distributor.

Q. Are you familiar with the Goodyear battery accessory line?

A. As a competitor, I am. In other words, what do you mean by that?

Q. As a competitor, you are familiar with it?

A. Yes.

By Mr. Dias:

Q. You offer delivery service, do you not?

A. That is right, we do.

Q. And will you state again how often you offer delivery service?

A. Most of my territory. We make a delivery once a week and in some parts of the territory twice a week.

Q. Now, if you know, does the Goodyear supplier furnish or offer better service, delivery service?

A. He could, yes, because he is right in the area. We are a few miles distance from our dealer and we haven't 152 any fast delivery service. We have our routine delivery, and that is all.

155 Mr. Dias: Your witness, Mr. Thompson.

Mr. Thompson: May I have a few minutes' recess?

Hearing Examiner Kolb: Yes, we will take a short recess.

(Short recess taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: I have no questions, sir.

Hearing Examiner Kolb: We will adjourn at this time until two o'clock.

(Whereupon, the hearing adjourned at 1:15 p.m. to reconvene at two o'clock p.m.)

156 Afternoon Session.

(2:00 P. M.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: Mr. Blumenthal, please.

Thereupon, DAVID B. BLUMENTHAL was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. David B. Blumenthal, 5913 Ridge Avenue, Roxborough.

Q. And the name of your company?

A. Philadelphia Wholesale Distributors.

Q. What is your position with the company?

A. Salesman.

Q. How long have you been with the company?

A. Thirty-eight years.

Q. Thirty-eight.

Q. Have you been a salesman all that time?

A. All that time.

Q. What is your sales territory, Mr. Blumenthal?

A. I would say it covers north of Hunting Park Avenue, north of Jenkintown, and Bucks County—part 157 of Bucks County, I should say, and Montgomery County, Roxborough, Manayunk.

Q. Do you work on a salary or commission?

A. Commission.

Q. What type customers do you sell to?

A. Mostly car dealers at the present time, and I would say maybe 20 percent service stations.

Q. Among those service stations are there any Atlantic stations?

A. I have one at the present time.

Q. Have you ever sold to more Atlantic stations?

A. Oh, yes. In the years gone by I have sold a lot of them.

Q. Will you tell us roughly how many is "a lot"?

A. Twenty-five.

Q. What type product—

A. Or thirty.

Q. What type products did you sell them formerly?

A. Well, as Mr. Hoffman related, we handled the full line of chemicals, and in those days I would sell them batteries, AC products, that is oil filters, plugs, and the kindred chemical lines—Dupont, whatever was the prevailing chemical at that particular day. I mean each year there is a new polish comes out, as you all know.

For instance, we handle turtle wax for the last two or three years as a polish. We are distributors of 158 Turtle Wax. Years previous to that there would be another wax. We would sell things like that to Atlantic dealers that they couldn't get through TBA.

Q. Why did you stop selling to Atlantic stations?

A. I just gave it up as a bad job. It was a question of making stops and not getting any business so I concentrated more on car dealers and stations that I could sell.

Q. How long ago was that?

A. It started about ten years ago, I guess.

Q. Do you sell to one Atlantic station now?

A. At the present time.

Q. Are there other Atlantic stations in your territory?

A. Oh, yes.

Q. Have you ever called on those stations?

A. Well, I have called on a few of them to try to sell them some of the items that we handle. And in some cases I was successful. I mean kindred lines, not, the lines that they handle, TBA. But as I said before, there is not enough to it and I more or less gave it up.

Q. On these Atlantic stations in your territory, do you observe them as you make your rounds? Have you noticed them?

A. Oh, sure. I go right past them.

Q. And in those you stop at, will you tell us what they advertise on their station in the line of TBA?

A. You have your Goodyear batteries and Good-159 year tires. That seems to be the feature on their windows, the decals. Other than that I don't see—unless they may put a streamer in the window, like Dupont, Exide, or something like that.

Q. You mentioned that you formerly sold them Exide batteries and Dupont line?

A. That is right.

Q. Can you give us some idea of the volume that you sold them?

A. Going back a few years, I would say it goes back maybe twelve years, ten years, the Dupont people supplied you with missionary men. You would go around with those missionary men, call on the accounts. It could be Atlantic or anything, whatever happened to be in the territory that particular day.

We always wrote up a lot of business in the Dupont line. When you asked for volume, I have written up as high as a thousand dollars in one day on Dupont. Of course it was a very good day. I am going back to the days when we sold 15 or 20 cases to a dealer and you would make 15 stops and you would sell a lot of merchandise.

Q. You talked about the Dupont line. What was your experience in the Exide line, Exide batteries?

A. With Exide, in those days, you would sell some dealers Exide and they might prefer Willard or they might prefer something else. In those days they were handling practically anything.

160 Q. When did you begin to lose the Dupont line, do you recall? Lose sales in the DuPont line?

A. The only thing that I can tell you is this, and I can't put my finger on the date, but I would say maybe four or five years ago the Atlantic men would go around with the Dupont missionary men, to the Atlantic dealers. Naturally by the time we got there it was too late.

Q. Can you relate a similar experience with reference to Exide batteries?

A. No, I couldn't.

Q. Do you recall any specific instances of loss of sale? Any specific stations, Atlantic stations?

A. Any number of them. I mean—you don't want names on this, do you? It could be ten or twelve stations in a

particular vicinity where the Dupont manufacturer—the Dupont man, when he went out with me, would tell me there is no use going in that station, I was there with the Atlantic salesman a couple of weeks ago.

Q. Were you offering your Dupont line at the same price?

A. Definitely.

Q. Have you ever called on new Atlantic station operators in your territory?

A. No, sir.

Q. You have not? In the loss of specific Atlantic accounts did the operator ever give you any reason for refusing to buy?

161 Mr. Thompson: I object to the question unless it is made definite with respect to the time, the place.

Hearing Examiner Kolb: The question calls for a Yes or No answer; objection overruled.

By Mr. Dias:

Q. Did any Atlantic station operator ever give you a reason why he did not buy your merchandise?

A. I could answer that Yes or No. Some Yes and some No. That is the only thing I could tell you.

Q. As to those who did give you a reason, where the answer is Yes, can you give us the time and place and the name of the operator?

A. Sir, I would rather not do that. I would rather tell you my experience and let it go on from there, because I don't want to implicate any dealers in this thing. All I can tell you is this: That the proof of the pudding is that if you went into an Atlantic dealer and they—for instance, we do a big job on AC products. That is cartridges, spark plugs, which is one of the key lines that we carry. And it was practically impossible to sell them lines like that—cartridges or plugs.

You would go in and ask them about it and they would simply say, "We have enough, we will remember you the next time," or pass it off like that. There was never any definite reason for not buying, No.

Q. Do you recall what those particular stations were 162 handling in the TBA lines, what products?

A. They were handling the AC line, and Goodyear belt line, Dupont line. They are the three numbers that we were particularly interested in—AC, Dupont, and the battery line.

Q. Do you know where they got those lines from?

A. I know where my dealers get them from.

Q. Where do they get them from?

A. Mr. Glenn, Chestnut Hill.

Q. Mr. Glenn?

A. He is the Atlantic distributor.

Q. Is Mr. Glenn located in the Mount Airy section.

A. He is located at Willow Grove Avenue and German-town Avenue. That would be Chestnut Hill.

Q. Do you furnish delivery service in your territory, Mr. Blumenthal?

A. Oh, yes.

Q. How often do you furnish delivery service?

A. Well, in my particular case I get service out there pretty promptly. I would say my territory overlapping. I get every other day service. In some cases, every day.

Q. Is that an important feature in selling to the Atlantic stations?

A. I wouldn't think so.

Q. You do not?

A. No.

163 Not the lines that we handle. There may be ignition or hard parts where they get a car that they have to repair and they have to have something in a hurry. But if a man is going to buy Dupont polish he doesn't run down

to the last can before he has to re-order, or the same thing goes for spark plugs or cartridges.

In other words, if we could call on him every week and keep a supply up, it would necessitate a 24-hour service as far as delivery goes.

Mr. Dias: That is all, Mr. Chairman.

Cross-Examination.

Hearing Examiner Kolb: Cross-examine.

By Mr. Thompson:

Q. You sell to service station dealers for cash or credit?

A. Credit and cash.

Q. Depending upon the individual financial responsibility of each?

A. That is right.

Mr. Thompson: I have no other questions.

Hearing Examiner Kolb: That is all, Mr. Blumenthal.

Thank you very much for coming down.

(Witness excused.)

164 Mr. Dias: Mr. Kevis, please.

Whereupon DOUGLAS W. KEVIS, was called as a witness for the Commission and, having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. Douglas W. Kevis, 1309 West Ninth Street, Chester, Pennsylvania. That is Harris and Leonard.

Q. What type business is Harris and Leonard in?

A. Distributor of U. S. Tires. We have our own capping shop.

Q. Do you handle any products other than tires?

A. Tires tubes, batteries and recapping. That is the extent of it.

Q. What about the company sales area? Can you define that for us, please?

A. Yes. Chester. We go out as far as Chadds Ford. We don't go into 69th Street. We go down by the river all the way up to the Philadelphia Airport.

Q. What type of customer, class of customer, does Harris and Leonard sell?

A. We sell industrial accounts, commercial accounts, gas stations, new car dealers, garages.

165 Q. How many salesmen does the company employ?

A. We have two salesmen on the routes that cover gas stations, new car dealers, and garages. Joe Leonard and myself take care of the industrial and commercial business.

Q. Did you at one time solicit service station business?

A. Yes, I did.

Q. Can you tell us when that was?

A. Back in 1953 or 1954.

Q. For how many years prior to that?

A. I would say about six.

Q. How long have you been with the company?

A. Ten years.

Q. Have you been a salesman with the company that length of time?

A. Yes. Six months I spent in the office and then I went outside selling.

Q. How are you compensated? Salary or commission?

A. Salary and commission.

Q. Does your company have delivery trucks? Do you afford delivery service?

A. Yes. Two routes. They pick up and deliver twice a week. They stop in the service stations and garages. Then

we have two trucks equipped with air compressors that take care of the industrial and the garages if they need it.

Q. How often do your service station account trucks 166 make deliveries?

A. They can make it any time. They will run back to the store, get it and take it out if it is a fast deal. But then they usually cover twice a week.

Q. You mentioned that there were two other salesmen that now solicit the service station accounts, among other accounts?

A. Yes.

Q. Who are those two?

A. Bob Brennan and William Colby.

Q. What was your territory when you were soliciting 167 service station accounts?

A. Part of Chester, Media, all the way in. We didn't go into 69th Street. We went as far as Clifton Heights and down the river.

Q. Did you cover that territory in selling to, among others, service stations from the time you first started selling up to 1934, is that correct?

A. That's right.

Q. During the time that you were soliciting service station business, Mr. Kevis, were there any Atlantic service stations in your sales territory?

A. Yes.

Q. Can you give us some idea of how many there were?

A. That is a hard one. I can't come up with that just like that. There were quite a few.

167 Q. Did you solicit all those stations?

A. Oh, yes. Stopped at all those stations.

Q. Were you able to sell all of them?

A. Some recapping, and once in a while new tires if they—just in spots where they needed something in a hurry, a special thing.

Q. Among the Atlantic stations did you have any that bought your tires on a stock basis?

A. Well, there was one or two, but they were independents. They weren't set up as a class B station.

Mr. Thompson: I object to "independents" and ask that the answer be stricken.

The Witness: In other words, a man owned a building and everything else. He had Atlantic products in there.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Dias:

Q. What other type Atlantic station was there?

A. Just company-owned, I imagine.

Q. Were you able to sell or did you sell to company-owned stations on a stock basis?

A. No.

Q. Did you sell them any batteries on a stocking basis?

A. Once in a while, yes. Not too much.

168 Q. Was that on a stocking basis?

A. No, not on a stocking basis.

Q. With those company-owned stations, were you able to do any business with them?

A. Oh, yes.

Q. What type business?

A. Recapping.

Q. Among Atlantic stations, how often did you call on those stations in your territory?

A. Twice a week.

Q. On all of them?

A. Yes.

Q. Do you recall now the tires and batteries they carried in their stations?

A. Goodyear Tires, and Goodyear Batteries. They handled Lee before they had Goodyear.

Q. Can you tell us when that was, approximately?

A. I can't come up with that. I don't know that. I don't remember.

Q. Do you know in your sales territory at that time who the Goodyear supply point was? Who the Goodyear supplier was?

A. Yes. It was Miller, over in the 69th Street area. He used to come into Drexel Hill and points there. Then there was Ed Parris. He was in Sharon Hill at the time and 169 he finally moved into Glenolden, on McDade Boulevard.

Q. Were you at any time able to do any more business with the Atlantic stations?

A. How do you mean, "any more business?"

Q. You state that you were able to do some, that you did recapping and that you could sell an occasional tire or battery?

A. That's right.

By Mr. Dias:

Q. Have you ever sold any Atlantic stations on a stocking basis, tires and tubes?

A. Yes.

Q. What type stations were they?

170 A. I come back to that again.

Mr. Mason: I object on the ground the question has been asked and answered.

Hearing Examiner Kolb: Objection overruled.

The Witness: It is a station that isn't owned by Atlantic, and has Atlantic pumps in there.

By Mr. Dias:

Q. On the other type station that is owned by Atlantic, have you ever sold those stations, any of them, at any time, tires or batteries on a stocking basis?

A. Not on a stocking basis.

Q. By the way, what do you consider a stocking basis?

A. If a man puts in about 40 or 50 tires, I consider that a stocking basis, if he carries your line.

Q. In making calls on Atlantic stations, or in attempting to sell to them, did any operator ever give you any reason why he did not buy your line?

Mr. Thompson: I object to that question for the same reason as has been stated on this record before. No specification as to time or place or identity of people.

Hearing Examiner Kolb: That is a preliminary question I believe that requires a "yes" or "no" answer.

By Mr. Dias:

Q. You may answer. Was there such a situation?

A. I can give you a "yes" on that but I want to 171 explain something to you.

Hearing Examiner Kolb: He will ask you a further question.

By Mr. Dias:

Q. The answer is "yes," is that correct?

A. Yes.

Q. Can you tell us a situation, or when it occurred?

A. I can't tell you when it occurred but I can tell you where it occurred.

Q. Can you tell me where and with whom?

A. With Jim Myers, over on Westchester Pike in Manoa.

Q. Can you give us a time, roughly, on that? Was it in 1954 or prior to that?

A. I wouldn't even begin to go into that. I couldn't really say the time.

Q. What did Mr. Meyers tell you?

Mr. Thompson: That is objected to, without some specification as to time—as to a time which would show it had relevancy in this proceeding.

Hearing Examiner Kolb: Can't you say, Mr. Witness, whether it was in the last few years or longer, or what period of time generally?

The Witness: Well, it was before I started on commercial accounts, I can tell you that. I don't know when.

172 By Mr. Dias:

Q. And you started on commercial accounts when?

A. About 1953.

Q. Have you been selling to that station, to that operator?

A. Been selling recapping, yes.

Q. Have you sold him any tires?

A. No.

Q. Or batteries?

A. No. I think we sold him one set of white-walls one time that he needed in a hurry.

Q. How about batteries?

A. No, no batteries.

Q. Can you recall, how long had he been buying from you?

A. Do you mean prior to this?

Q. Prior to the time that you went over on commercial accounts.

A. I would say he had been buying from us for a couple of years.

Q. That would be about—

A. I am not sure of this time limit in here. I am just sort of more or less guessing.

Q. Did he carry other tires and batteries and accessories in his station?

A. Yes.

Q. Do you recall what type or what brand?

173 A. It was Goodyear. Goodyear tires and batteries.

Q. If I suggest the year 1952, would that refresh your recollection as to when this conversation took place?

A. I couldn't tell you on that.

Q. You can't answer?

A. No.

Q. Did he ever carry anything other than Goodyear tires, batteries and accessories?

A. Not that I know of.

Q. Sir?

A. No, not that I know of.

Q. How about the price lines in U. S. Tires, Mr. Kevis, what are the various price lines? Do they have a first line, second line?

A. Now a third line. They had two lines before, at that time.

Q. Are they comparable to the price lines of the Goodyear tires?

A. Oh, yes. In fact the list price is exactly the same.

Q. It is the same?

A. Yes.

Mr. Dias: That is all.

Cross Examination by Mr. Thompson.

Q. Your principal competitor in this business is C. A. Powers?

174 A. That's right.

Q. Am I correct in my understanding that your company and C. A. Powers sell to about 100 percent of the Atlantic stations in your Chester area? Almost all of them?

Mr. Dias: May I have that question?

The Witness: I couldn't answer that one. I don't know what C. A. Powers is doing. I attend to my own business.

By Mr. Thompson:

Q. But that is your principal competitor?

A. I would say yes.

Q. And Powers is also soliciting the Atlantic stations in your territory?

A. I believe so, yes.

Q. You have been out of this particular phase of the business since 1954, haven't you?

A. 1953 I think.

Q. Which of your salesmen handles the service stations in the area that you formerly had in your sales territory?

A. That route was split. They cover the whole thing now. It is split up into two routes.

Mr. Thompson: Thank you.

Mr. Dias: Will you read Mr. Thompson's last question? (Question read.)

175 *Redirect Examination by Mr. Dias:*

Q. Was it your testimony that you sell to a hundred percent of the Atlantic accounts, or solicit?

A. We solicit them. We don't sell to them. You are talking territory now, generally?

Q. In the territory that we were discussing, your territory, yes.

A. Yes.

Mr. Dias: That is all.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(A recess was taken.)

176 Hearing Examiner Kolb: Come to order please.

Thereupon, GLENN L. WETZEL, was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address, please.

A. Home address?

Q. Yes.

A. Glenn L. Wetzel, 316 Arlington Avenue, Milmont Park, Pennsylvania.

Q. What is your position with Chester Auto Parts, Inc., Mr. Wetzel?

A. I am the president.

Q. Where is that company located?

A. Ninth and Hyatt Street, Chester.

Q. Will you describe generally the history of your company, that is, as to when it began, the type of products sold, and so forth.

A. It was begun right at the end of the war when I came out of service. It was then a partnership. It existed as a partnership for nine years, at which time I bought out my partner and formed a corporation of Chester Auto Parts Company, Inc.

177 Q. Do you recall the year when the company was organized as a partnership originally?

A. June 1, 1946.

Q. Do you recall the date when it was organized as a corporation?

A. April 1, 1955.

Q. What is the business of Chester Auto Parts, Inc.?

A. Parts, paint, chemicals, machine shop.

Q. Do you sell what are commonly described as TBA items?

A. Yes, sir.

Q. What is the marketing area of your company?

A. Delaware County.

Q. Delaware County, Pennsylvania.

A. Yes.

Q. How many salesmen do you employ?

A. Two and myself. I work on the road also. So there are actually three salesmen.

Q. How are the salesmen other than yourself compensated? On a salary or commission or both?

A. The salesmen—speaking of the other two—are compensated on a commission basis.

Q. What type of delivery service do you have?

A. Four trucks.

Q. Do you have an office staff?

A. Yes, sir.

178 Q. How many are in your office staff?

A. Thirteen in my employ all together.

Q. Do you maintain a stock of inventory at your place of business?

A. Yes, sir.

Q. Including so called TBA items?

A. Yes, sir.

Q. Would you please state the principal TBA products and brand names carried by your company?

A. Willard batteries, AC filters, Purolator filters, Fram filters, Dupont chemicals, Mac'sit chemicals, Hollingshead or Whiz products.

Q. What are they? What type products are they?

A. The last three that I mentioned?

Q. Yes.

A. They are primarily your chemicals, as they are known in the trade. That is your polishes, cleaners, radiator products, et cetera.

Q. To what type of customers do you sell? By "you" I mean your company.

A. Service stations, car dealers, independent garage men, body shops, used-car dealers, industrial accounts. Commercial or industrial accounts.

Q. Is your company generally competitive as to price, quality, and service with other sellers of TBA products
179 in your area?

A. Yes, sir.

Q. Do you sell fan belts?

A. Yes, sir.

Q. What brand do you carry?

A. It is Dayton Rubber. The manufacturer's name is Modac.

Q. Do you carry hose and belts of any type?

A. Yes, sir; same manufacturer.

Q. And same brand name?

A. Yes, sir.

Q. How long have you been an outside salesman with the company?

A. Eleven years.

Q. Since its inception?

A. Yes.

Q. Are there any Atlantic service stations in your marketing area?

A. Yes, sir.

Q. Approximately how many?

A. The exact number of Atlantic stations I couldn't tell you. I can more probably tell you the ones that we call on. It would be approximately 20, I would say.

Q. How frequently do you call on such stations?

A. That varies. Some of the accounts that don't buy or buy very little in the way of hard items are called on
180 possibly twice a month. The others may be called on four times a month.

Q. What has been your experience with respect to sales of TBA products to Atlantic service stations?

Mr. Mason: I object to the form of the question. It is too broad.

Hearing Examiner Kolb: Read the question.

(Read.)

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. You may answer.

A. Well, shall we start at the beginning?

Q. Yes. Start back in 1947.

A. In 1947 and '48 sales to Atlantic stations were exceptionally good. At that particular time—

Q. Are you confining yourself to TBA in your answer?

A. Yes, tires, batteries, accessories, filters, fan belts; the standard line.

It was not too difficult to obtain—

Mr. Thompson: May I understand this. I understand you say tires, batteries, and accessories. I did not understand you before to say that you carried tires.

The Witness: Excuse me. I don't carry tires. I meant batteries and your other rubber products, other than tires—hoses and fan belts.

181 At that time it wasn't difficult to sell Willard batteries because batteries were scarce. If you went in and had batteries, it was possible for you to sell them. Brands were not important, whether it was Exide, Williard, Auto Lite, or whatever it was; they were all using whatever they could obtain.

At that particular time we tried to develop the Macsitt line ourselves, which had not been marketed to any great extent through service stations in that area. And I felt that inasmuch as it was a line which no one else had, if I developed it, it was mine.

By Mr. Kelaher:

Q. What did that ~~line~~ consist of?

A. That was your wax and radiator, speciality lines. Waxes, polishes, et cetera. I was successful in building that to a point where my purchase approximated \$5,000 to \$6,000 a year. However, about that time—

Q: Pardon me for interrupting. Would you state what time that was, what year?

A. I would say 1949 I began to peak out on that. 1949 or 1950. Somewhere in that vicinity.

Mr. Mason: Are these purchases confined to Atlantic stations?

Hearing Examiner Kolb: So I understood.

Mr. Kelaher: He is talking about his own purchases.

182 The Witness: I am speaking of my purchases.

To go back to 1949 or 1950 and break out all individual service station sales would, well, if you gentlemen would like to do it, I will give you the records.

Mr. Mason: That is the vice of this kind of testimony. It is meaningless.

Mr. Kelaher: If we are given an opportunity, we will develop this.

Mr. Thompson: I do understand Mr. Kelaher, that this line of questioning applies to the business generally and not to Atlantic stations.

Mr. Kelaher: I will let the witness answer that question.

By Mr. Kelaher:

Q. You stated that your peak sales reached \$5,000 or \$6,000 maximum about 1949 or 1950?

A. Yes, sir.

Q. And the \$5,000 or \$6,000 represents the purchase price of your company, by your company of the Mac's-It line?

A. Yes.

Q. To whom did you sell the Mac's-It line?

A. The Mac's-It line was sold to service stations, which included Atlantic, ~~Sinclair~~.

Q. Approximately—

A. No Sun and no Gulf. We have never done much 183 business with either of those two. Basically Sinclair and Atlantic.

Q. How many Atlantic stations were you selling Mac's-It to at that time?

A. I would approximate 20 or 25 stations. It is difficult to say specifically at this time.

Mr. Mason: May it be understood that I have a running objection to questions concerning ~~Sinclair~~ stations?

184 Hearing Examiner Kolb: The objection as to the Sinclair stations will be overruled so far as Goodrich is concerned, and it will be received subject to a motion to strike so far as Goodyear is concerned.

Mr. Thompson: I understand this is applicable to all these questions.

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. What was your normal markup on the Mac's-It line at that time?

A. I grossed 20 percent on resale of that merchandise. That is wholesale, not resale. In other words, I bought it at 60 and sold it at 40, approximately.

Q. So a \$5,000 purchase would represent about a \$6,000 annual volume of sales, is that correct?

A. Yes.

Q. Did you—who were the principal purchasers of the Mac's-It line at that time?

A. Atlantic and ~~Sinclair~~.

Q. Now, would you take the story from there?

A. About that point the TBA structure began to develop within the service station marketing area, and I saw my sales of Mac's-It drifting away. It was being supplied through TBA structure of distribution rather than the jobber structure of distribution, and it continued 185 to drop to a point where I decided to drop the line.

In other words, that was the distribution of the line. I had to sell something that I wasn't in competition with TBA in order to remain within the market.

Mr. Mason: Can you fix the time?

The Witness: I would say about 1951.

By Mr. Kelaher:

Q. You lost the market about 1951 on?

A. It began to drop in '50 and continued to drop until 1951, about 1951 I took on the distributorship of Hollingshead or Whiz products.

Q. Did you continue to purchase the Mac's-It line after 1951?

A. Yes, but only by demand. My purchases of Mac's-It dropped to a tenth of my purchases. I was below a thousand dollars in purchases of Mac's-It products.

186 By Mr. Kelaher:

Q. About 1951, did you observe to whom the Atlantic stations were purchasing the Mac's-It line from?

A. Ed Parris.

Q. Who is Ed Parris?

A. He is the Atlantic TBA distributor in Glenolden. At that time I think he was located in Sharon Hill and has since moved to Glenolden.

Q. Can you give us the names of any Atlantic dealers whose business was lost—whose Mac's-It business was lost to Mr. Parris?

A. Yes.

Q. Would you please state those names and their station locations, if you can?

A. Burt Rehill—

Mr. Thompson: Is this a matter within this witness' knowledge, Mr. Kelaher?

By Mr. Kelaher:

Q. I would like your answer to be based on your own knowledge.

187 A: This is on my own knowledge. They were my own accounts.

Q. Go ahead.

Mr. Thompson: Just a minute. Would you mind repeating the question?

(Question read.)

By Mr. Kelaher:

Q. Go ahead.

Mr. Thompson: I don't understand, sir, whether he is saying that it is to his own knowledge that he lost the accounts, or to his own knowledge that Mr. Parris lost the accounts.

Mr. Kelaher: To his own knowledge that he, meaning Mr. Wetzel, lost the accounts to Mr. Parris.

Mr. Thompson: How could he know whether he lost it to Mr. Parris?

Mr. Kelaher: Let the witness answer that.

Hearing Examiner Kolb: I think we are getting too technical.

The Witness: It is very easy to answer. The packages come in with Ed Parris' name right on them.

By Mr. Kelaher:

Q. Go ahead. Give the names.

A. John Rehill—

Q. Let's get the first one.

A. Burt Rehill.

188 Burt Rehill, 9th and Kerlin; John Rehill.

Q. Would you give the city, too?

A. That is Chester. John Chambers, Second and Lloyd; Al Kohler, 22nd and Edgmont; Laughead Service Station, Lynwood; Joe Boice. That would be Chester Pike and Oak Lane. That is Folcroft, I guess there.

Joe Abel, Fairview Road and Chester Pike, Crum Lynne.

Q. Did you at one time sell the Mac's-It line to a Chet Drozdowsky, Eddystone, Pennsylvania?

A. Yes.

Q. What was your experience on the sale of the Mac's-It line to Mr. Drozdowsky?

A. The same situation.

Q. And he was an Atlantic dealer?

A. Yes, at that time there was another man in there by the name of Charley Miller, at Chester's present location, and Chet was located at about 10th and Morton.

Q. He was at 10th and Morton location when this incident occurred?

A. Charley Miller was in on that other group. He was at the Eddystone location.

Q. Did you also lose the business of Charles Miller?

A. Yes.

Q. Was he an Atlantic dealer?

A. Yes.

Q. Did you at one time sell the Mac's-It line to
189 George Curney of Ninth and Flower Street, Chester, Pennsylvania?

A. Yes.

Q. What was your experience with Mr. Curney?

A. Well, George came in just—that had previously been Burt Rehill's station there, and he moved from there to Ninth and Kerlin, and George came in about the time that I began to push the Hollingshead line or the Whiz line.

George had bought small quantities of Mac's-It, but he went on to the Hollingshead line to a greater extent.

George just came into the picture about the time I went into transition from Mac's-It to Whiz.

Q. Did you at one time sell the Mac's-It line to an Atlantic dealer named Bill Sikorsky?

A. Yes. At the time I sold him he owned his own location. I never lost Bill's business.

Q. Where was he located?

A. He was at—he operated as Chester Highland Garage. He was at the corner of Highland Avenue and I believe Chichester Road, a Chester post office. It could possibly be a Feltonville post office.

Q. You stated that he owned his own station. Didn't these other Atlantic people own their own stations?

A. No, sir.

Q. Did you at one time sell the Mac's-It line to a Jack Pollock?

190 A. Yes. That is the location that Burt Rehill formerly had. Jack Pollock was in that location before Burt. These dealers move around.

Q. What was your experience with respect to sales of the Mac's-It line to Mr. Pollock?

A. It was a comparable situation.

Q. By that do you mean that the Mac's-It line business was lost to Mr. Parris?

A. That is right.

Q. For the record, would you please state whether Mr. Pollock owned his own station.

A. No, he did not.

Q. You stated that you also sold the Hollingshead line under the brand name of Whiz, I believe.

A. Yes.

CX 116B

Q. "Identify Mr. Burkett."

A. In September 1950, H. C. Burkett was Manager, Erie, Pennsylvania District, Domestic Marketing Department, Atlantic.

CX 117

Q. "Origin, etc. Who made corrections?"

A. This document is believed to have been prepared and corrected by S. J. Heideman, Manager, TBA Section, Atlantic, and to have been a working paper for his own use.

CX 118A

Q. "Identify Stotz, Cox, Griffiths."

A. In March 1950—

W. F. Stotz was Senior Attorney, Legal Department, Atlantic.

E. R. Cox was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

Q. "Obtain data referred to in paragraph 2 of letter."

A. The data, if compiled, cannot be located.

CX 120

Q. "Identify Griffiths and RMT."

A. In July 1950—

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

R. M. Taitt was Office Assistant, TBA Section, Atlantic.

323 CX 127A-E, CX 127F-H

Q. "Review for origin, distribution, etc."

A. CX 127A-E were prepared by Goodyear, and CX 127F-H are believed to have been prepared by Goodyear.

Apparently, these copies were distributed to S. J. Heideman, Manager, TBA Section, Atlantic, and were given by him to H. K. Paxson, Assistant Manager of that section.

CX 127H

Q. "Retroactive accounts. Explain."

A. Occasionally there is delay in submitting or securing approval of a G-1209 with respect to a petroleum company account. This was more frequent in the early stages of the program. In such a case, a belated G-1209 was prepared, pre-dated to the commencement of the account's TBA purchases, so that the oil company could collect the commissions due on such purchases.

CX 128A-B

Q. "Origin. Identify Sanborn."

A. Author: S. J. Heideman, Manager, TBA Section, Atlantic.

In May 1950, A. R. Sanborn was Manager, Newark, New Jersey District, Domestic Marketing Department, Atlantic.

CX 130/B

Q. "Obtain list of dealers and distributors in Newark for solicitation, and also list of those signed."

A. Neither of such lists can be located.

Q. "Describe Sales Statistical Section."

324 A. This is a section of the Marketing Accounting Division of the Accounting Department, which performs the various statistical functions required by the Domestic Marketing Department.

Q. "Obtain monthly G-1204 lists for Newark for June and July 1950."

A. A copy of each of these lists is attached, covering the three periods June 12-20, June 21-July 20, and July 21-August 20. (CX 226A-H, 227A-K, 228A-K, respectively).

Q. "When did Newark plan start?"

A. June 12, 1950.

CX 132

Q. "Identify the following:"

A. In August 1950—

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

H. H. Ingersoll was Manager, Southern Region, Atlantic.

H. W. Jollie was Manager, New England Region, Atlantic.

E. R. Cox, Jr. was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

C. P. Mumma was Manager, Sales Group, Eastern Pennsylvania Region, Atlantic.

W. W. Pleasants was Manager, Plant Development and Maintenance Section, Operations, Domestic Marketing Department, Atlantic.

Ed Stanton was Supervisor, Direct Marketing Sub-Group, Philadelphia-New Jersey Region, Atlantic.

Q. "Describe Service Station Committee."

A. This is an advisory committee which recommends policies concerning the appearance and arrangement of facilities of Atlantic service stations.

CX 134

Q. "Origin; date of survey, areas included."

A. This survey was made in July and August 1950 by the Sales Research Section at the request of the Domestic Marketing Department, and was conducted by mail among dealers and distributors in the Newark, Wilmington and Erie districts. See paragraph 5.2 of stipulated testimony of Atlantic personnel.

Q. "Describe Sales Research Section."

A. This is a section in the Domestic Marketing Depart-

ment in Philadelphia which performs the research functions of that department.

Q. "Who was in charge of the section when the survey was made?"

A. Noble Hall.

CX 135A-C

Q. "Origin, date, distribution, etc."

A. See paragraph 5.4 of stipulated testimony of Atlantic personnel.

CX 135A

Q. "Who are Chairman and Committee (and members) referred to in first paragraph?"

A. The Committee was composed of regional TBA coordinators. The Chairman was S. J. Heideman. See under CX 135A-C.

Q. "Obtain data itemized under 1(1-7)."

326 A. The listing was merely of suggested steps for possible ultimate action when and if the contemplated program was adopted. There is no indication that the items listed were ever compiled or assembled.

CX 135B

Q. "Explain E."

A. See paragraph 6.2 of stipulated testimony of Atlantic personnel.

Q. "Explain K."

A. The Standards of Operation are policies prepared by the Service Station Committee. See explanation under CX 132.

Q. "Explain M."

A. If and when the sales commission plan in contemplation was adopted, it was expected that the Atlantic regions and districts affected would arrange to return for credit all unused signs, stands, merchandise, etc., which they had in stock.

CX 135C

Q. "Explain O."

A. See stipulated testimony of Atlantic personnel, paragraph 6.6.

CX 136A

Q. "Who attended the February 14, 1951 meeting?"

A. This exhibit does not refer to a meeting. On the date mentioned a decision was made by the Domestic Marketing Department, as indicated by the document.

327 See paragraph 5.6 of stipulated testimony of Atlantic personnel.

CX 136B

Q. "Identify survey referred to."

A. The survey referred to is that reflected by CXID 101A-Z20.

Q. "Which 4 regions wanted new program?"

A. Eastern Pennsylvania—Philadelphia, New Jersey—Western Pennsylvania—Southern.

See paragraph 5.3 of stipulated testimony of Atlantic personnel.

CX 137A E

Q. "Origin, date, distribution, etc."

A. This was prepared by the New York Region in connection with its 1951 Sales Plan (CX 155A H).

Q. "Explain I, 2, e."

A. The operations procedures prescribe the care and maintenance of Atlantic's property and safety precautions to be observed.

Q. "Explain I, 4."

A. This was an informal report of the erection of competitive service stations.

Q. "Explain I, 6."

A. The dealer salesman was expected to assist in keeping at a minimum the outstanding balances owed to Atlan-

tic by its dealers by recommending credit limits applicable to his dealers and by making collections from them when accounts became overdue.

328 Q. "Explain I, 8."

A. B 30 is the standard Atlantic ticket evidencing a delivery of merchandise to a dealer or distributor. For the purpose of auditing delivery and collection reports of its drivers, Atlantic had its salesmen secure from its dealers periodically copies of such tickets left with them.

Q. "Explain I, 12."

A. The dealer salesman is expected to encourage each dealer to operate his station in the most effective manner, and to make specific recommendations to that end.

Q. "Explain I, 13, a."

A. See explanation for paragraph III D of CX 155A H.

Q. "Explain I, 14, a."

A. "Unit control" was a system of inventory control available for use by dealers.

Q. "Explain I, 14, b."

A. The phrase "minimum stock standards" refers to the minimum inventories of products which should be maintained under good operating practice.

Q. "Explain I, 14, c."

A. The dealer salesman is expected to recommend various steps for keeping a dealer's stock in salable condition, such as storage and display techniques which will avoid package damage, return of shopworn merchandise for re-packaging, and the practice of selling the oldest stock first.

329 Q. "Explain I, 19, c."

A. The dealer salesman is expected to report informally, and as appropriate action by Atlantic's competitors.

Q. "Explain II."

A. The District Dealer Bank is a list maintained by each district office of persons who are interested in becoming Atlantic lessee dealers.

Q. "Explain III, 1."

A. The guide, copies of which are no longer available, outlined the respective responsibilities of various Atlantic employees in assisting a new dealer to become established.

Q. "Explain IV, 3."

A. To the extent that a dealer maintains books establishing sales goals and measuring performance and makes them and his bookkeeping records, available, the salesman is expected to review the data and advise the dealer how to improve his efficiency and sales effectiveness.

Q. "Explain V, 3."

A. The service station school then current is described under paragraph II A of CX 155A H.

Q. "Explain V, 4 and V, 7."

A. The Retail Instructor was equivalent to the present service salesman and provided on-the-job instruction. See paragraph 1.5 of the stipulated testimony of Atlantic personnel.

Q. "Explain V, 8."

330 A. The merchandising and sales promotion instruction involved the general principles of such subjects and, as such, was applicable to all products regardless of brand.

Q. "Explain V, 10."

A. The salesman is expected to make certain that each dealer is aware of prices for goods and services which are being charged and services which are being rendered by his competitors, and to advise the dealer to the extent the latter desires, how to maintain profitable operations under competitive conditions.

Q. "Explain V, 11, a."

A. To the extent that an annual review consultation does

not assist a dealer in establishing sales goals and merchandising programs for particular products or services, the salesman is expected to aid the dealer in that regard, but only to the extent the dealer wishes.

Q. "Explain V, 13."

A. The provision seems self-explanatory.

CX 138

Q. "Identify SJH."

A. In June 1951, S. J. Heideman was Manager, TBA Section, Atlantic.

CX 139A B

Q. "Identify SJH."

A. In January 1952, S. J. Heideman was Manager, TBA Section, Atlantic.

331 Q. "Check adjustment cut-off date of March 31, 1952."

A. The cut-off date for Lee tire adjustments was July 31, 1952 and for Exide batteries was July 1, 1952.

Q. "Identify C. O. Domestic and J. O. Long."

A. Controller's Office—Domestic, of which J. O. Long was Chief Accountant.

Q. "Is antifreeze under S. C. P. with Goodyear or Firestone?"

A. Not in the case of Atlantic.

CX 140

Q. "Identify B 139's."

A. B 139 is the designation of the sales slip form used by dealers to make sales on credit to Atlantic credit card holders.

A typical B 139 form as revised in October 1951, is attached. (CX 140AC)

CX 141, 142

Q. "What was correct information?"

A. See paragraphs 6.6 and 6.7 of stipulated testimony of Atlantic personnel.

CX 143, 144

Q. "Identify William Stockton and SJH."

A. In July and November 1951, William Stockton was Credit Manager, Domestic Marketing Department, Atlantic.

At the same times, S. J. Heideman was Manager, TBA Section Atlantic.

332 CX 145

Q. Identify Taitt and Stockton."

A. In June 1952, R. M. Taitt was Office Assistant, TBA Section, Atlantic, and William Stockton was Credit Manager Domestic Marketing Department, Atlantic.

Q. "Obtain list attached to Taitt's letter of February 11, 1952."

A. Attached is a copy of the letter of February 11, 1952 with its attached list. (CX 145A D)

Q. "Was a list of Firestone products prepared?"

A. The list attached to Taitt's letter was the only list prepared by him and includes various accessory products regardless of brand:

That list was restated in terms of Goodyear and Firestone departmental numbers in CX 145. Neither that nor Taitt's list ever became an official part of Atlantic's credit program.

CX 146A B

Q. "Origin, date, distribution, etc."

A. This is part of the minutes of a regular meeting of the staff of the Domestic Marketing Department, i.e., the Vice President of Marketing, the Assistant General Manager of Domestic Marketing, and the Managers of the principal units of the department. Such minutes are normally distributed to members of the staff, the Sales Personnel Manager, and the Foreign Marketing Manager.

333 The date of the meeting is as indicated on the document itself.

Q. "Explain reference in 4(d)(1) to 'Class 2 Program'."

A. The phrase "Class 2 Program" referred to efforts then being made by Atlantic to strengthen lessee dealer marketing.

CX 148, 149, 150

Q. "Review re distribution."

A. The distribution specified in CX 148 was made.

Q. "Identify E. R. Cox, Jr."

A. As of February 1951, E. R. Cox, Jr. was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

CX 151

Q. "Identify Taitt."

A. In March 1951, R. M. Taitt was Office Assistant, TBA Section, Atlantic.

CX 153A B

Q. "Identify R. M. Taitt."

A. In April 1951, R. M. Taitt was Office Assistant, TBA Section, Atlantic.

Q. "Are distribution points still the same?"

A. Yes.

CX 154

Q. "Identify personnel."

A. As of January 1951—

Porter B. Caldwell was Manager, Gasoline Solvents and Naptha Section, Domestic Marketing Department, Atlantic.

334 J. J. Mulvey was Manager, Fuel Oil Section, Domestic Marketing Department, Atlantic.

H. B. Stone was Manager, Lubricants, Wax and Process Section, Domestic Marketing Department, Atlantic.

CX 155A-H

Q. "Author."

A. The plan was prepared by the New York Region.

Q. "Obtain complete sales plan plus appendices."

A. The masked portions of CX 155A-H relate to motor oil, kerosene, furnace oil, residual oils, and technical products, and are thus irrelevant.

Appendices A-1—A-6 represent the table on CX 155B-D broken down for each of the 6 districts in the New York Region and would, therefore, seem too detailed and trivial for inclusion here. Appendix B relates only to gasoline and is omitted as irrelevant. Copies of Appendices C, D and E (referred to in paragraph III F of CX 155) are attached (CX 155I, 155J-K, and 155L-M, respectively).

Q. "Were similar plans for other regions set up?"

A. Yes.

CX 155B

Q. "Gallons?"

A. Yes.

CX 155C, D

Q. "What is 1 unit—T & B?"

A. See Appendix C to the Plan.

335 Q. "Were stations assigned quotas on this basis?"

A. No.

CX 155E-G

Q. "Explain II A."

A. At the time, Atlantic's Red, White & Blue course was a one week informal dealer training program in service station operation, including the technical aspects of automobile servicing. In New York, the retail instructors were to expand their instruction to include the subjects mentioned, namely product merchandising and display.

Q. "Explain II D."

A. The Four Step Method of Instruction is an instructional technique, having the following primary steps:

1. Prepare the student.
2. Present the operation to him.
3. Try out his performance.
4. Follow up on his performance after completion of the instruction.

Q. "Explain II E."

A. The retail instructors were to utilize the D. P. A. CASE plan in teaching dealers how to sell. These letters are initials for instructive phrases and words as follows:

D—Determine the customer's need.

P—Point out that need to the customer.

A—Ask him to buy.

336 CASE stands for "Convenience," "Appearance," "Safety," and "Economy."

Q. "Explain III A."

A. Event openings are promotional devices for attracting customers, utilizing attractive station decoration, advertising, publicity, and possibly premiums.

Q. "Explain III B."

A. Efforts were to be made to modernize existing leased stations in accordance with currently accepted standards of appearance and layout.

Q. "Explain III C."

A. Each Marketing District was to maintain a list of potential lessee dealers and employees for such dealers, and to have its personnel constantly alert to opportunities to recruit such dealers and employees.

Q. "Explain III D."

A. The Dealer Annual Review is an annual informal meeting of each lessee dealer, his salesman, the supervisor of the salesman, and the Dealer Sales Manager, at which the dealer's prior performance and future plans are discussed and the dealer is advised how to achieve greater efficiency and profitability.

Q. "Explain III E."

A. Facilities were to be made available at which the training described under II A hereof could be provided.

Q. "Explain III F."

337 A. Quarterly dealer progress reports were made to check on the performance of lessee dealers. A copy of the report form is attached, designated "Appendix E."

Q. "Explain III G."

A. Prizes were to be awarded to dealers for excellence in service, and dealer performance was to be measured under normal operating conditions by Atlantic personnel visiting stations as customers.

Q. "Explain IV B."

A. When a new contract dealer is added Atlantic must incur expense for pumps and other equipment. A formula was used to determine whether the anticipated sale of petroleum products by a particular dealer would justify Atlantic's incurring the necessary expense and hence taking on that dealer.

Q. "What is C. R. S. (VI)?"

A. Commission Route Salesman.

Q. "Explain X A."

A. In establishing region-wide sales goals for TBA, consideration was given not only to normal sales increases by established outlets but also to sales by new outlets.

Q. "Explain X B."

A. The formulas referred to were the ratios stated in sections VI, VII, and VIII on CX 155C-D.

Q. "Explain X C."

338 A. The coordinator's plan provided for the training of dealers and Atlantic personnel in the features and application of new products, sales techniques, etc. through clinics and double teaming in the field with salesmen, and for assistance to dealers in planning events, holiday promotions, mass displays, and budget selling plans.

Q. "Explain XI."

A. This section lists the meetings to be held during the year and the approximate frequency. Paragraphs A and B refer respectively to meetings of Atlantic district and regional managers and to meetings of Atlantic district personnel.

CX 156

Q. "Origin, distribution, etc."

A. This document was part of the 1951 New York Region Sales Plan (CX 155A-H).

Q. "Refer to Sales & Operations Groups."

A. Sales Groups are personnel responsible for the Sales activities of the Domestic Marketing Department.

Operations Groups are personnel of the Operations Department, which is described under CX 183 hereof.

Q. "To whom does policy apply (Class 2, 3)?"

A. The policy applied to Class 2 stations in its entirety and to Class 3 stations as provided in paragraph (2) and in the first sentence of paragraph (3).

CX 157

Q. "Identify HKP (Paxson)."

339 A. In February 1951, H. K. Paxson was Assistant Manager, TBA Section, Atlantic.

Q. "Refers to appendices, etc."

A. See under CX 155A-H.

CX 159

Q. "Identify E. R. Cox and Mr. Fritsch."

A. In March 1951

E. R. Cox was Manager Sales Promotion Section, Domestic Marketing Department, Atlantic.

Paul R. Fritsch was in the Identification Division, Goodyear.

Q. "Describe Service Station Committee."

A. See under CX 132.

CX 160A

Q. "Identify J. O'Neill."

A. In June 1951, J. O'Neill was Division Petroleum Representative, Philadelphia, Goodyear.

Q. "Obtain description of Territories 7G, etc."

A. The various territories indicated by the number and letter symbols are Atlantic's salesmen's territories. Their respective areas are as indicated by the addresses of the retail outlets listed under each on CX 160 C-P.

Q. "Obtain New Jersey list."

A. A copy of the list is attached (CX 160Q-Y).

CX 161

Q. "Identify SJH."

340-A A. In July 1957, S. J. Heideman was Manager TBA Section, Atlantic.

Q. "Obtain list of 46 dealers."

A. A copy of the list is attached (CX 161A-B).

Q. "Advise as to action taken."

A. On July 24, 1951 the respective managers of Atlantic's Philadelphia-Suburban and South Jersey Districts were requested to have their personnel communicate with the 46 dealers and to report the results of such action. No reports having been received from the districts by August 20, 1951, follow-up letters were sent both managers on that date (see CX 162). On October 15, 1951, Goodyear sent Atlantic a list of stations not yet identified, which included all of the 46 dealers except the following (see CX 167):

P. Di Ciccio, 26th & Snyder Sts., Philadelphia, Pa.

Henry's, Chester & McKinley, Norwood, Pa.

A. E. Mapes, 9th & Bay, Ocean City, N. J.

S. Van Sant, Townsend Inlet, N. J.

I. Wells, 34th & Asbury, Ocean City, N. J.

is not known whether or not identification arrangements were made with the 5 dealers listed above prior to October 15, 1951.

Q. "Obtain names of those who were eventually signed."

A. The lists attached to CX 160A indicate that all the 46 dealers signed Goodyear contracts.

Q. "Were 46 dealers all Class 3?"

340-B A. No.

CX 165

Q. "Obtain list of N. E. refusals."

A. A copy of the list (on 2 sheets) is attached (CX 165A-C).

CX 167

Q. "Obtain attached lists."

A. A copy of each of the lists is attached (CX 167A-M).

CX 170A-F

Q. "Were refusals all Class 3 dealers?"

A. No.

Q. "How many were later identified?"

A. This information is unobtainable.

Q. "What are valance structural difficulties?"

341 A. "Valance structural difficulties" refers to buildings of retail outlets which lack the type of windows on which valances can be applied.

CX 171A-D

Q. "Were refusals Class 3 dealers?"

A. Refusals included Class 2 and Class 3 dealers.

CX 172A-B

Q. "Were refusals Class 3 dealers?"

A. Refusals included Class 2 and Class 3 dealers.

CX 161-172A-B

Q. "Which of these dealers were later identified by Goodyear?"

A. No records were kept with respect to which dealers were later identified. Only with respect to CX 172B do any Atlantic personnel have any recollection, and of the dealers listed thereon the TBA Coordinator recalls that at least the following subsequently displayed Goodyear identification:

Frank Funk

F. H. Buongiorno

Ray Cochran

Ken Alt

CX 173

Q. "Obtain TBA Bulletin #17, June 1, 1951."

A. A copy is attached. (CX 173A-E.)

CX 174, 175

Q. "How many outlets were signed as Goodyear 342 dealers or associate dealers?"

A. This information is unobtainable.

CX 177

Q. "Who is Jennings Bros.? Explain."

A. See Goodyear comments on this exhibit.

CX 179C

Q. "Obtain form referred to in D. general."

A. A copy is attached. (CX 179J.)

Q. "Was this form used in other two regions?"

A. No.

CX 179D

Q. "Describe Sales Promotion Section."

A. This is a section of the Domestic Marketing Department which provides sales promotion service to that department. To that end it devises and prepares programs, projects, and material designed to increase the sale of products and services by Atlantic retail outlets of all types.

CX 179E

Q. "Explain Training Program Plan."

A. This refers to the program for conveying to Atlantic field sales personnel in areas outside the three original test districts information concerning the mechanics of the sales commission plan and the products involved.

CX 179G

Q. "Explain XV 2."

343 A. At the time, lessee dealers in the New York Region paid as rental for their stations an amount equal to 6% of their gross dollar income from sales of products (other than gasoline and Diesel fuel) without regard to brand and from services rendered. Hence, if their TBA sales were reduced, rentals received by Atlantic would likewise be smaller.

Q. "Identify U. S. I."

A. U. S. Industrial Chemicals Co., Atlantic's source of menthanol or evaporative type antifreeze.

Q. "Obtain recommendation under XVII."

A. A copy of the recommendation of August 17, 1951, is attached. (CX 179K.)

CX 180, 181, 182

Q. "Describe 'Fram' and 'Purolator'."

A. "Fram" and "Purolator" are brand names of automotive oil filter equipment manufactured by Fram Corp., Providence 16, R. I. and Purolator Products, Inc., 970 New Brunswick Ave., Rahway, N. J., respectively.

CX 183

Q. "Describe Operations Department, Sales Development Committee, AR 50 design station."

A. The Operations Department is responsible for constructing, equipping and maintaining the plants, service stations and other properties under the jurisdiction of the Domestic Marketing Department.

344 The Sales Development Committee is an advisory committee of the Regional Sales Managers which makes recommendations to the Domestic Marketing Department of action designed to increase the sales of products by Atlantic directly and through Atlantic outlets.

AR 50 is the designation of the service station design adopted by Atlantic marketing management in 1950.

CX 185

Q. "To whom was distribution made?"

A. This bulletin was directed to Atlantic's TBA Coordinators in the Eastern Pennsylvania, Western Pennsylvania and Southern Regions.

CX 186

Q. "Identify Mr. Bergh."

A. In July 1952, Charles F. Bergh was a buyer in Atlantic's Purchasing Department.

CX 187

Q. "Identify all names listed."

A. In September 1952—

W. L. Schmidt was Chief Accountant, Western Pennsylvania Region, Atlantic.

E. E. Sickels was Chief Accountant, Eastern Pennsylvania Region, Atlantic.

Fred Wanders was Chief Accountant, Southern Region, Atlantic.

J. O. Long was Chief Accountant, Controller's Office—Domestic, Atlantic.

345 Charles F. Bergh was a buyer in Atlantic's Purchasing Department.

J. P. Miller, Jr. was General Auditor, Atlantic.

R. G. Mulholland was Manager, TBA Section, Atlantic.

G. M. Elliot was in the Petroleum Sales Department, Firestone Tire & Rubber Co.

Q. "Explain memo."

A. The sales commission contract does not provide for payment of commissions on purchases of TBA by Atlantic for resale through its company-operated stations. This memo establishes a procedure to insure that such purchases will not be included with sales of TBA on which commission is to be paid.

346 CX 170B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A. Class	Number
2	3
3	33

CX 171B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A. Class	Number
2	0
3	6

CX 171C

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A. Class	Number
2	5
3	7

CX 172B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A. Class	Number
2	4
3	0

347 Q. "State the classifications of the 4 dealers who are recalled to have subsequently displayed Goodyear identification."

A.	Dealer	Class
	Frank Funk	2
	F. H. Buongiorno	2
	Ray Cochran	2
	Ken Alt	3

348 Mr. Ballard: May it please the Examiner, with reference to the foregoing stipulations, I would like to point out that at page 62 of the record I stated with respect to Exhibit 137 that Atlantic did not admit that the document was ever officially accepted, promulgated, or used. I further stated that Atlantic was not certain as to the circumstances under which that document had been prepared. Subsequent investigation has disclosed that the document was in fact adopted by the New York region in connection with its 1951 sales plan, and the correct information with respect to the document is contained in the foregoing stipulation under an appropriate reference to CX 137-A through E.

356 Hearing Examiner Kolb: United States of America, Before Federal Trade Commission. In the Matter of The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

Stipulation re testimony of the Goodyear Tire & Rubber Company, and The Goodyear Tire & Rubber Company, Inc. ("Goodyear") personnel.

Counsel for respondent, The Goodyear Tire & Rubber Company, and The Goodyear Tire & Rubber Company, Inc. ("Goodyear"), and counsel supporting the Complaint agree and stipulate that if appropriate officers and employees of Goodyear were called as witnesses by counsel

supporting the Complaint in this proceeding, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding. For the purpose of this stipulation both the Goodyear Tire & Rubber Company and the Goodyear Tire & Rubber Company, Inc., are referred to as "Goodyear".

357 Goodyear Response to Request for Additional Information Concerning Certain Exhibits.

CX 23

Q. "Date of Document."

A. January or February, 1950.

Q. "Obtain ten issues of Goodyear Merchandiser furnished Oil Company accounts."

A. Submitted herewith. (CX 23-C to 23-L, inc.)

Q. "(Obtain) special Service Station Edition of Goodyear 1950 Advertising Book."

A. Submitted herewith is a photostat copy of the cover and index page of Goodyear's 1950 Advertising Book. (CX 23M.) Goodyear knows of no "special Service Station Edition" of this book and believes the reference thereto in CX 23 A is a reference to Goodyear's 1950 Advertising Book. This book contains 116 pages and Goodyear has been able to locate only one copy. This is available for inspection or copying, if necessary.

CX 25

Q. "Date, place, etc., of meetings."

A. Information is set forth on CX 24-B.

CX 26

Q. "Date, place, etc., of meetings."

A. Goodyear-Atlantic dealer meetings were held during March and April, 1951 in the following cities:

358 New England Region: Boston, Mass., N. Boston, Mass., S. Boston, Mass., Providence, R. I., Worcester, Mass., Springfield, Mass., Pittsfield, Mass., Hartford, Conn., Bridgeport, Mass., New Haven, Conn., Fall River, Mass.

New York Region: New York, N. Y., Buffalo, N. Y., Rochester, N. Y., Danville, N. Y., Syracuse, N. Y., Oneida, N. Y., Elmira, N. Y., Binghamton, N. Y., Watertown, N. Y., Malone, N. Y., Albany, N. Y., Newburgh, N. Y.

Philadelphia, Pa.-New Jersey Region: Philadelphia, Pa. (3 meetings), Trenton, N. J., Camden, N. J., Atlantic City, N. J.

CX 28

Q. "Date."

A. Shortly prior to February 27, 1951.

CX 30-31

Q. "Dates."

A. Shortly prior to February 27, 1951.

CX 35-36

Q. "Develop further data re Schrader Inventory. Is Schrader part of Goodyear TBA line, etc."

A. Schrader products were and still are part of the Goodyear TBA line. When Atlantic adopted the sales commission plan it had no need for its inventory of Schrader products. Goodyear was willing to take over this inventory and thought this was easier than the proposed arrangement whereby Atlantic would return the goods to Schrader.

359 CX 51

Q. "Obtain identification Form A-98101L."

A. Submitted herewith is the current version of Form A-98101L. (CX 51 A) No copies of the version in use as of 8/7/51 have been located.

CX 11

Q. "Identify."

A. This exhibit was written by R. W. Keil and J. W. Basista of Goodyear shortly prior to the commencement of the Newark test program which commenced on June 12, 1950. It was intended to be a tentative outline for field representatives to guide them in organizing the test. R. W. Keil was then working on the Newark program. He is now a Goodyear Petroleum Representative in New York assigned to the Shell program. J. W. Basista is identified on the Goodyear list of "Names Appearing on Documents."

Q. "What is the extent of Newark District territory?"

A. Goodyear's Newark District consists of the following counties:

N. Y.: Orange, Rockland, Sullivan.

N. J.: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren (except for Alpha and Phillipsburg).

CX 17

Q. "Identification Division, Advertising Department (Goodyear)—Describe function."

A. The chief function of the Identification Division, Advertising Department is to furnish to Goodyear dealers signs and display materials to identify them as sales outlets for Goodyear products.

CX 18

Q. "Was Suburban Oil Co., Mt. Vernon, N. Y. signed to Goodyear contract?"

A. No.

CX 19

Q. "Reference to Field Operating Department."

A. We assume that this is a request for a general description of the Field Operating Department. This department, formerly officially designated Wholesale Field Operating Department, is now called Field Operating Control. It performs the function of prescribing and administering procedures to be followed in executing the sales policies established by the sales departments. The Department has jurisdiction over all district offices, field sales accounting offices and five Car and Home warehouses.

CX 24

Q. "Date."

A. Shortly prior to February 27, 1951.

Q. "See 24-C reference to Phillipsburg meeting this week and display used there. Was this Phillipsburg, N. J.?"

361 A. It is not now known whether or not the reference is to Phillipsburg, N. J. In any event, the meeting referred to has no connection with Atlantic Refining Co. or with the Atlantic TBA program.

Q. "In what towns and cities, etc. were Dealer Meetings held?"

A. See response for CX 26.

Q. "Reference to Goodyear men."

A. We assume this is a request for identification of the Goodyear men referred to in the document. See Goodyear list of "Names Appearing on Documents."

Q. "Reference to Advertising Dept. Describe generally."

A. The advertising Department at Goodyear is headed by K. C. Zonsius, Director of Advertising, who reports to Mr. R. S. Wilson, Executive Vice President.

Under Mr. Zonsius are various managers and staff personnel divided generally according to product groupings.

The function of the Advertising Department is to determine promotion strategy in conjunction with the Sales Departments, to translate strategy into advertising, usually in conjunction with outside agencies, and either to supervise its publication by Goodyear in various media or to make it available to Goodyear's customers for their own use as they may desire.

CX 32

362 Q. "Review for identification of names."

A. Names are: W. E. Blank, Sales Manager, Replacement Sales, Auto-Lite Battery Corporation; L. A. Knight, of Auto-Lite; J. C. Thomas, Manager, Storage Battery and Brake Lining, Goodyear.

CX 34.

Q. "Reference to B-19 and B-19A forms (obtain)."

A. Copies of Form B-19 as used in 1951 cannot be found. Form B-19A was merely a gummed sticker with a number on it that was attached to the returned tire so as to identify the tire with the customer's claim.

Q. "Also reference to Service Department Policy. Describe generally."

A. Goodyear's Service Policy is based on its Lifetime Tire Guarantee:

"Every tire or tube of our manufacture bearing our name and serial number, is guaranteed to be free from defects in workmanship and material without limit as to time or mileage. If our examination shows such tire or tube has failed under the terms of this guarantee, we will either repair it or make a reasonable allowance on the purchase of a new tire or tube.

"This guarantee is made for the exclusive benefit of the owner actually using these products, is not assignable, and no claim hereunder will be recognized
363 unless submitted on our standard claim form duly filled out and signed by such owner.

"There is no other warranty or liability, express or implied, applicable to these products. No representative has authority to make any representation, promise, or agreement except as stated herein."

With the exception of the second paragraph, which was added in 1952, this has been the form of guarantee in force since prior to March, 1951.

By referring claims for adjustment to Goodyear, tires may be adjusted under this guarantee by Goodyear dealers or stores, either by repairing them free of charge or making a reasonable allowance on a replacement. When a dealer presents to Goodyear a repair bill or a tire properly adjusted in accordance with Goodyear's policy, he is reimbursed for his expense of adjustment, plus a handling fee of 10% of the adjustment price. This applies to all Goodyear dealers, whether or not covered by a Sales Commission Plan.

CX 39.

Q. "Was document enclosed with CX 38."

A. No. It was presumably enclosed with CX 37.

CX 46.

Q. "What is Battery Merchandiser?"

A. A battery merchandiser is a battery display rack with a trickle charger so that batteries placed for display will be kept charging.

CX 56-57-58

Q. "56 refers to attached from Eddie Sauter. Obtain letter. Identify Republic."

A. Copy of letter is submitted herewith. Republic is identified in the letter. (CX 56-A)

CX 159

Q. "Identify Mr. Fritsch."

A. Paul R. Fritsch—Staff, Identification Division (Goodyear), now Manager of this Division.

CX 160

Q. "Identify J. O'Neill."

A. Goodyear's Division Petroleum Representative, Philadelphia, Pa., now Assistant District Manager, Philadelphia.

CX 177

Q. "Who is Jennings Bros.? Explain."

A. According to the document, this was an independent wholesalers in Cranston, Rhode Island. Mr. Gaylord did not know if this Atlantic account was to be classified as an oil company supplying dealer, in which case Atlantic would get a 10% commission on Car & Home merchandise, or whether it qualified as a jobber, in which case Atlantic would get a 7½% commission. Either way, it made no difference to Jennings.

370 Names Appearing On Documents 10-29-56.

Names	Positions.
Howard E. Ammerman	1-1-34 Manager Service Department 8-1-56 Special Assignments
Howard F. Aul	3-1-50 Philadelphia, Pennsylvania Service Representative 1-1-56 Philadelphia, Pennsylvania Manager District Service Department
Louis A. Barnes	4-1-50 Assistant Manager, Wholesale Field Operations 10-1-54 Manager, Wholesale Operating 1-1-56 Manager, Wholesale Operating
Joseph W. Basista	6-1-50 Senior Staff Petroleum Sales Department 11-1-56 Assistant Manager Petroleum Sales
David T. Buchanan	1-1-40 Staffman Advertising 1-1-56 Manager, Advertising and Sales Promotion
Wilford E. Cameron, Sr.	7-1-39 Staff Man Petroleum Sales Retired—10-1-51
Paul Castleberry, Jr.	1-23-50 Newark, New Jersey District Oper. Manager 10-1-50 Birmingham, Alabama Credit and Collection Clerk 10-16-50 GS Birmingham, Alabama Assistant Store Manager— Operating

Names	Positions
Russel S. Colton	4-6-50 Albany, New York District Service Representative 7-28-52 Albany, New York Headquarters Burlington, Vermont Field Representative #2 Exited 4-30-53 7-31-46 Senior Staff 1-1-56 Advt. Manager—Tire. Depts.
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William W. Evans	3-1-49 Syracuse, N. Y. Service Repres. 1-2-52 Syracuse, New York Head- quarters Auburn, New York Field Repres. Exited 7-15-53 1-1-40 Staff Man—Identification 1-1-56 Manager—Identification Div. 1-1-34 Manager Petroleum Sales 11-1-56 Special Assignments 4-1-45 Manager Associated Mdse. 11-1-51 New Toronto, Canada—Vice President in charge sales
Paul R. Fritsch	
Samuel A. Gaylord	
Henry G. Harper, Jr.	
Louis R. Harrah	2-16-45 Staff Man Deceased—8-17-50
Victor Holt, Jr.	5-1-44 Manager Tire Department 12-1-49 Vice President Chg. Tire Sales Div. 4-2-56 Vice President
Charles E. Knight	4-1-50 New York, New York Assistant District Manager 6-1-52 Buffalo, New York District Manager 11-1-54 Cleveland, Ohio District Manager 1-1-56 Cleveland, Ohio Assistant Div. Manager Retail Head- quarters, Chicago, Illinois 8-16-56 Cleveland, Ohio Assistant Division Manager Retail
John A. Lewin	6-1-44 Manager—Dealer Division Present Manager—Dealer Division
Isaac D. Love	6-1-49 Newark, New Jersey District Manager
Fred W. McConky, Jr.	12-15-44 New York, New York Manager N. E. Divn. 12-1-52 New York, New York Manager N. E. Divn. Assistant Vice President
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Joseph E. Mayl	6-1-44 Vice President Sales Manager Tire Sales Div. 12-1-49 Vice President & Sales Coordinator 6-27-52 Vice President & General Manager Films—Foam & Flooring Div.

Names	Positions
William M. Mettler	1-1-34 Assistant Secretary Deceased—6-7-55
Clair L. Metzger	6-15-48 Assistant Manager Trade Relations 11-1-51 Manager Associated Merchandise.
Jay T. Miller	10-21-36 Boston Chg. Service Dept. 7-1-51 Boston, Massachusetts Service Representative 1-1-56 Boston, Massachusetts Manager Dist. Service Dept.
Joseph W. O'Neill	1-1-47 Philadelphia, Pennsylvania Field Representative 3-1-51 Philadelphia, Pennsylvania Div. Petroleum Representative 11-1-54 Philadelphia, Pennsylvania Assistant District Manager
Clarence C. Osmun	5-1-44 Manager Trade Relations 12-1-52 Sales Managers Office Retired—2-29-56
William O. Reid	7-7-47 Hartford, Connecticut Dist. Service Repres. 1-1-56 Hartford, Connecticut Mgr. Dist. Service Dept.
Charles C. Ross	12-1-47 Manager Retread & Repair Matls. Sales 3-16-54 Manager Retread & Repair Matls. Sales 10-16-54 Senior Staffman Comm. Sales
Harry J. Ryan	11-1-46 New York, New York District Manager
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Edward C. Sauter	12-1-50 Pittsburgh, Pennsylvania District Manager
John W. Silk	5-1-54 Manager Cycle Tire Sales 8-16-50 Buffalo, New York Service Representative 10-1-51 New York, New York Petroleum Repres. Tr. 11-1-51 New York, New York Field Representative #1 6-1-52 New York, New York Field Representative #2 Exited—6-30-52
Joseph C. Thomas	1-1-50 Manager Storage & Brake Lining
George L. Wright	5-1-49 Manager Wholesale Field Oper. Department Exited—4-15-51
Kenneth C. Zonsius, Sr.	9-1-36 Manager—Auto Tire Div.— Tire Department 1-1-52 Director of Advertising 1-1-56 Director of Advertising

387 Hearing Examiner Kolb: The following data supplied by the Atlantic Refining Company concerning the three market areas designated by Counsel in support of the Complaint, namely, Philadelphia Suburban District; Wilmington, Delaware district; and Baltimore, Maryland district, will be received in evidence, with notation of the fact that portions of this data apply only to Goodyear, and portions apply only to Firestone.

The stipulation is as follows:

Data submitted by Atlantic Refining Company concerning the three marketing areas designated by the Federal Trade Commission in The Matter of The Goodyear Tire & Rubber Company, The Atlantic Refining Company, Corporations, Docket No. 6486. Dated: May 29, 1957.

Philadelphia-Suburban District.

1. Area comprising the Philadelphia-Suburban District:
See map attached (CX 248-A).

2. Names of Atlantic and Goodyear personnel concerned with TBA in the Philadelphia-Suburban District:

(a) Names of Atlantic personnel:

J. O. Estlow—Region Manager—Philadelphia-New Jersey Region.

A. R. Sanborn—Region Sales Group Manager, Philadelphia-New Jersey Region.

F. H. Romer—Region Direct Marketing Manager, New Jersey Region.

388 W. J. Jackson—Region T. B. A. Coordinator, New Jersey Region.

E. D. Smyth—District Manager, Philadelphia-Suburban District.

C. H. Pence—Philadelphia—Suburban District Dealer Sales Manager.

G. A. Arnholt—Philadelphia—Suburban District Sales Supervisor.

W. Handy—Philadelphia—Suburban District Sales Supervisor.

E. McConaghy—Philadelphia—Suburban District Sales Supervisor.

Promotable Dealer Salesmen:

John Mantini
R. C. Dunham
Daniel Reynolds
Jack Diamond
Edward O'Driscoll
J. Kearns
Thomas Hayes

Jack Hoffman
S. Petrison
Joseph Snyder
James Gallagher
William Keen
Joseph Muldoon

General Salesmen:

W. H. Weaver
N. B. Ludwig
George Gill

Philip Hopely
E. L. McKenna
George Headly

Service Salesmen:

Matthew Murray
Don Keyser
Charles Rowland
John McKernan
J. McIvor
M. Petrillo

F. Jones, Jr.
B. McWilliams
S. McLoughlin
R. C. Ringling
E. D. Barr

389 (b) Names of Goodyear personnel with whom Atlantic personnel of this District come in contact:

T. Butler Doolittle—District Manager
Luther Hutchinson—Assistant District Manager
A. H. Shafer—Regional Petroleum Representative
J. W. Fitzgerald—District Petroleum Representative
Fred Schaaque—Truck Tire Representative
J. Burke—General Line Salesman

J. Cavanaugh—General Line Salesman
 Stan. Panza—General Line Salesman
 C. McKeag—General Line Salesman
 W. Whitaker—General Line Salesman
 John Pease—General Line Salesman
 John Curry—General Line Salesman
 Gordon Harder—Store Manager
 R. Weymouth—Store Manager

3. Names and addresses of Goodyear supply points serving dealers and distributors in the Philadelphia—Suburban District:

Goodyear Tire & Rubber Company, 2750 North Broad Street, Philadelphia, Pennsylvania.

@ Harvey W. George, 3301 Princeton Avenue, Philadelphia, Pennsylvania.

† F. C. Glenn, 8006 Germantown Avenue, Philadelphia, Pennsylvania.

• Frank Hagan, 54th and Chester Avenue, Philadelphia, Pennsylvania.

390 ** Ellwood E. Kieser, 1527 Fairmount Avenue, Philadelphia, Pennsylvania.

† E. F. Miller, 809 Garrett Road, Upper Darby, Pennsylvania.

• Edward Parris, McDade Boulevard and Ashland Avenue, Glenolden, Pennsylvania.

@ Former Atlantic contract dealer.

† Former Atlantic lessee dealer.

• Present Atlantic lessee dealer.

** Mr. Kieser conducts his TBA supply operations separately from his operations as an Atlantic lessee dealer and is classified by Goodyear as an independent Dealer Supply Point.

Goodyear Tire & Rubber Company, 708 Summit Avenue, Jenkintown, Pennsylvania.

Goodyear Tire & Rubber Company, 310 Main Street, Norristown, Pennsylvania.

4. Data on the nominations of Atlantic outlets in the Philadelphia-Suburban District to Goodyear as of June 30, 1956:

Type of Atlantic Outlet	Total Number of Atlantic Outlets	Number Covered by Form G-1209†	Goodyear Classification‡	
			Dealers	Associate Dealers
(a) Lessee Dealers	226	174	2*	226*
(b) Contract Dealers	434	228	6‡	289‡
(c) Distributors	0	0		
(d) Customers of Distributors	0	0		

* Two lessee dealers have chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, presumably because each classification offers some advantages not afforded by the other. Such dealers are included in both categories in these figures.

‡ Four contract dealers have chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, presumably because each classification offers some advantages not afforded by the other. Such dealers are included in both categories.

§ Information as to actual signing of franchise agreements is not available. It is believed that virtually all dealers covered by a G-1209 and a large majority of the customers of Atlantic supplying dealers sign at least an initial franchise.

† Indicates the number of dealers regarded as potential TBA purchasers on whose purchases, if any, a commission will be paid, and not the number to whom sales were made. Does not include 61 customers of Edward Parris and 54 customers of Frank Hagan, both of whom are Atlantic supplying dealers.

392 5. Total dollar sales of Goodyear TBA in the Philadelphia-Suburban District in 1955 on which Atlantic received a commission are shown below**. These sales figures are the actual prices paid by the Atlantic dealer, regardless of whether he is classified by Goodyear as a "Dealer" or "Associate Dealer".

	Supply Points	Lessee and Contract Dealers*		
		Tires	Batteries Accessories	Total
Goodyear District Office	2750 N. Broad St., Phila.	\$ 18,022	\$ 9,363	\$ 16,400
Harvey W. George	3301 Princeton Ave., Phila.	140,758	33,477	65,971
F. C. Glenn	8006 Germantown Ave., Phila.	159,764	48,549	92,410
E. F. Miller	800 Garrett Rd., Bywood	136,009	41,079	82,212
Frank Hagan†	54th & Chester Ave., Phila.	81,015	16,678	32,989
Ellwood E. Kleser	1527 Fairmount Ave., Phila.	251,752	56,315	112,721
Edward Parriat	McDade Blvd. & Ashland Ave., Glenolden	103,134	21,708	35,258
Goodyear Tire & Rubber Co.	708 Summit Ave., Jenkintown, Pa.	0	0	0
Goodyear Tire & Rubber Co.	310 Main St., Norristown, Pa.	0	0	0
Total		\$800,454	\$227,709	\$417,721
				\$1,535,944

** Atlantic has no distributors in this district.

* A breakdown between lessee and contract dealers can be obtained only by a costly and time-consuming analysis of voluminous records.

† In the case of these Atlantic supplying dealers the sales figures are the prices paid by the supplying dealer and not by his customer.

- 393 6. Names and addresses of Atlantic distributors in the Philadelphia-Suburban District who are covered by a Form G-1209:

Atlantic has no distributors in this district.

7. Atlantic dealers in the Philadelphia-Suburban District who became dealers of Atlantic gasoline distributors.

Not applicable.

8. Current addresses of Atlantic Training Facilities in the Philadelphia-Suburban District:

Classrooms:

Germantown Jewish Community Center, Lincoln Drive and Emlen Street, Philadelphia, Pennsylvania.

Training Stations:

Joseph Barton, Ellet and McCallum Street, Philadelphia, Pennsylvania.

Charles Schock, Henry Avenue and Leverington Street, Philadelphia, Pennsylvania.

9. Names and then current business addresses of dealers and distributors in the Philadelphia-Suburban District whose relationships with Atlantic ceased in 1954 or 1955 under the circumstances indicated:

- (a) Leases or contracts cancelled during their terms are shown below. In all cases, formal termination was either by notice of cancellation from the dealer, by mutual cancellation by the dealer and Atlantic, or by death of the dealer.

- 394 (1) Lessee Dealers:

Leonard A. Anderson, Huntington Pike and Penn Street, Rockledge, Pennsylvania.

Harry Angelo, Island Road and Brewster Avenue, Philadelphia, Pennsylvania.

Joseph Arico, West Chester Pike and Marlboro Road, Stonehurst, Pennsylvania.

Edward F. Ausman, Montgomery Pike and Levering Mill Road, Cynwyd, Pennsylvania.

William Barton, Easton Road and Fair Oaks, Horscham, Pennsylvania.

Morris Bilson, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Morris Blum, Cheltenham Avenue and Pittman Road, Philadelphia, Pennsylvania.

W. G. Bond, Route #100, Uwchland, Pennsylvania.

Thomas Calvanesa, Chester Pike and Knowles Avenue, Glenolden, Pennsylvania.

Lynn Abbott Carden, Wycombe Avenue and Marshall Road, Lansdowne, Pennsylvania.

Bartholomew G. Casiello, Rising Sun Avenue, Front and Loudon Streets, Philadelphia, Pennsylvania.

John Chambers, Chester Pike and Clifton Avenue, Sharon Hill, Pennsylvania.

Arthur Chapis, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Albert Chasé, Roosevelt Boulevard and Adams Avenue, Philadelphia, Pennsylvania.

William A. Crisman, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Arthur R. Cummins, DeKalb Pike and Ford Street, Bridgeport, Pennsylvania.

Ralph D'Ambrosio, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Alex DeCarlo, Long Lane and Alderbrook Road, Stonehurst, Pennsylvania.

Walter J. Donko, Durham and Hulmeville Roads, Midway, Pennsylvania.

Frank Eney, Jr., 262 Lincoln Highway, Fairless Hills, Pennsylvania.

William Eyer, Township Line Road and Church Road, Abington, Pennsylvania.

William R. Foster, 8759 Frankford Avenue, Philadelphia, Pennsylvania.

David J. Fowler, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Archibold W. Garvin, Jr., Bethlehem Park and Valley Green Road, Whitmarsh Township, Pennsylvania.

G. B. Gason-Niebling, Carlisle Street and Hunting Park Avenue, Philadelphia, Pennsylvania.

396 Mario Germani, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Angelo Giordano, 22nd and Bainbridge Streets, Philadelphia, Pennsylvania.

Alfred Godino, Belmont Avenue opposite Jefferson Street, Lower Merion Township, Pennsylvania.

John P. Hanlon, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Thomas Hanna, Front and Coral Streets, Philadelphia, Pennsylvania.

George G. Hewitt, Chester Pike and Fairview Road, Leiperville, Pennsylvania.

George Hinds, Frankford and Briston Pike, Croydon, Pennsylvania.

Louis Huber, Southwest Corner York Road and Moreland Avenue, Hatboro, Pennsylvania.

T. A. Kennedy, Cottman Street and Roosevelt Boulevard, Philadelphia, Pennsylvania.

Howard M. Kinsey, Route No. 100, Uwchland, Pennsylvania.

Albert Kohler, 22nd and Edgemont Avenue, Chester, Pennsylvania.

Samuel Levin, 5th and Bristol Streets, Philadelphia, Pennsylvania.

Angelo F. Lutz, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

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Angelo Lutz, Belmont Avenue opposite Jefferson Street, Lower Merion Township, Pennsylvania.

Thomas Major, Torresdale Avenue and Levick Street, Philadelphia, Pennsylvania.

Harold J. Maloney, Frankford and Tyson Street, Philadelphia, Pennsylvania.

Charles A. McCafferty, Baltimore Pike and Providence Road, Media, Pennsylvania.

John and Robert McClay, Aramingo, Frankford and Deveraux Streets, Philadelphia, Pennsylvania.

Charles McKeefrey, West Chester Pike and Kirklyn Avenue, Kirklyn, Pennsylvania.

John J. Medelka, Lansdowne and Stratford Avenue, Pennsylvania.

Harold Miller, Island Road and Brewster Avenue, Philadelphia, Pennsylvania.

Anthony J. Morengo, Frankford Avenue and Tyson Street, Philadelphia, Pennsylvania.

Ronald C. Morrison, Rt. No. 100, Uwchland, Pennsylvania.

John A. Murray, Wadsworth and Cheltenham Avenues, Philadelphia, Pennsylvania.

Svend Nielsen, 262 Lincoln Highway, Fairless Hills, Pennsylvania.

Herman J. Polsky, N. W. Corner Bustleton Avenue and Knorr Street, Philadelphia, Pennsylvania.

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Earl E. Rambo, Long Lane and Alderbrook Road, Stonehurst, Pennsylvania.

Thurman Riter, Garrett and Huntley Roads, Upper Darby, Pennsylvania.

Fred Rosato, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Donald T. Rothera, Roosevelt Boulevard and Cheltenham Avenue, Philadelphia, Pennsylvania.

Walter Runyon, N. S. Chester Park West of Hinkson Boulevard, Ridley Park, Pennsylvania.

Walter Runyon, Church Lane and Bailey Road, Yeadon, Pennsylvania.

Theodore Salvina, 10th, Ridge, and Callowhill Street, Philadelphia, Pennsylvania.

Boyd J. and Billy B. Sanderson, 262 Lincoln Highway, Fairless Hills, Pennsylvania.

Edward J. Santarlas, 28th Street and Passyunk Avenue, Philadelphia, Pennsylvania.

George Schofield, Ridge and Leverington Avenues, Philadelphia, Pennsylvania.

John Schtaba, Huntingdon Pike and Penn Street, Rockledge, Pennsylvania.

Donald Schurr, Montgomery Park and Levering Mill Road, Cynwyd, Pennsylvania.

399 Francis G. Shea, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Benjamin J. Skalski, Carlisle and Hunting Park Avenues, Philadelphia, Pennsylvania.

Sports Parking, Inc., 21st and Lehigh Avenue, Philadelphia, Pennsylvania.

Frank E. Stapleford, Jr., Easton and Bradfield Roads, Roslyn, Pennsylvania.

Louis Stein, Marshall Road and Owens Avenue, Lansdowne, Pennsylvania.

Frank Sweeney, Route 413 and Leamberis Avenue, West Bristol, Pennsylvania.

Transcript of Proceedings.

Paul Trapp, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Carl Unger, Route 413 near Newportville Road, Bristol, Pennsylvania.

Vernell L. VanAlstine, Naylor's Run Road, Llanerch, Pennsylvania.

Joseph Winnemore, Chester Pike and Knowles Avenue, Glenolden, Pennsylvania.

Alexander Zabielski, Bridge and Thompson Streets, Philadelphia, Pennsylvania.

(ii) Contract Dealers:

Alden Park Manor Garage, Cheltenham and Wissahickon Avenues, Philadelphia, Pennsylvania.

William Anderson, MacDade Boulevard and Wolfenden Street, Collingdale, Pennsylvania.

400 Bryner Chevrolet Company, 525 Township Line, Elkins Park, Pennsylvania.

James L. Burns, Jr., Main Street and Forrest Avenue, Jeffersonville, Pennsylvania.

Century Buick, Inc., S. E. Corner 18th and Jackson Streets, Philadelphia, Pennsylvania.

Cipressi Brothers, 6230 State Road, Philadelphia, Pennsylvania.

DeKalb Filling Station, Brown and DeKalb Streets, Norristown, Pennsylvania.

John DeNenno, Route 202, Dilworthtown, R. D., West Chester, Pennsylvania.

Dintenfoss & Cohen, S. E. Corner 11th and Race Streets, Philadelphia, Pennsylvania.

Fernwood Garage, 5934 Baltimore Avenue, Philadelphia, Pennsylvania.

Joseph Groner, Parkland, Pennsylvania.

Haddington Motor Service, 1654 North 57th Street, Philadelphia, Pennsylvania.

401

Henry S. Hoffman, Long Lane and Wildwood Avenue, East Lansdowne, Pennsylvania.

Godfrey J. Holmes, Haverford Road West of Wynnewood Road, Ardmore Park, Pennsylvania.

Juniata Auto Service, Erie Avenue and Bennington Street, Philadelphia, Pennsylvania.

Lehigh Service Garage, 2712 North 5th Street, Philadelphia, Pennsylvania.

George MacKissic, 150 South Main Street, Yardley, Pennsylvania.

Montgomery County Motors, Inc., Easton Road North of Maple Avenue, Horsham, Pennsylvania.

Moss Auto Repair, 860 North 40th Street, Philadelphia, Pennsylvania.

Newton Ford Company, Inc., Sycamore Street, Newton, Pennsylvania.

Norman's Service Station, Easton Road and Laurel Avenue, Horsham, Pennsylvania.

William J. O'Driscoll, S. E. corner Crystal and Tioga Streets, Philadelphia, Pennsylvania.

Albert Paul, S. W. corner 6th Street and Columbia Avenue, Philadelphia, Pennsylvania.

George S. Raynes Garage, 2431 Gordon Street, Philadelphia, Pennsylvania.

Adam Secoda, Welsh Road and Roosevelt Boulevard, Philadelphia, Pennsylvania.

J. W. Stevens, 108 South Keswick Avenue, Glenside, Pennsylvania.

Vince and Ralph's Service Station, 6055 Hazel Avenue, Philadelphia, Pennsylvania.

402

Edward A. Wheaton, 63rd and Dicks Avenue, Philadelphia, Pennsylvania.

Lewis White, 2658-60 Island Road, Philadelphia, Pennsylvania.

Harry W. Wiley, 1532-67th Avenue, Philadelphia, Pennsylvania.

(iii) Distributors:

None.

- (b) Leases or contracts expired and were not renewed because of either the individual decision of Atlantic or the dealers, or the mutual decision of both:

(i) Lessee Dealers:

John Black, Huntingdon Turnpike and Bethayres Road, Bethayres, Pennsylvania.

James J. Bradley, West Chester Pike and Keystone Avenue, Upper Darby, Pennsylvania.

Aniello L. Iacono, Providence Road and South Avenue, Secane, Pennsylvania.

Howard Konkle, Wycombe Avenue and Marshall Road, Lansdowne, Pennsylvania.

Robert H. Mortimer, Torresdale Avenue and Levick Street, Philadelphia, Pennsylvania.

Arthur A. Mostardi, St. Lawrence Road and West Chester Pike, Highland Park, Pennsylvania.

403 Felix Piern, Lindbergh Boulevard and Wheeler Street, Philadelphia, Pennsylvania.

John P. Rafferty, Lindbergh Boulevard and Wheeler Street, Philadelphia, Pennsylvania.

James E. Russell, N. W. corner 39th and Market Streets, Philadelphia, Pennsylvania.

Eugene A. Scott, Lancaster Pike and Wynnewood Road, Wynnewood, Pennsylvania.

Joseph K. Wilson, Baltimore Pike and Oak Lane Avenue, Clifton Heights, Pennsylvania.

(ii) Contract Dealers:

Anderson Tire Exchange, 613 Spring Garden Street, Philadelphia, Pennsylvania.

Cardona Brothers, 2635 West Passyunk Avenue, Philadelphia, Pennsylvania.

CarolSELLI's Service Station, Baltimore Pike and Saxer Avenue, Springfield, Pennsylvania.

Clock Service Station, S. W. corner 30th Street and Allegheny Avenue, Philadelphia, Pennsylvania.

H. W. Forth, DeKalb Pk., Bridgeport, Pennsylvania.

Fred C. Powell, Bradford Avenue, West Chester, Pennsylvania.

Michael Rose, 200 East Roosevelt Boulevard, Philadelphia, Pennsylvania.

Tony's Auto Repair, 1125 South 13th Street, Philadelphia, Pennsylvania.

404 (iii) Distributors:

None.

405 Wilmington, Delaware District.

1. Area comprising the Wilmington, Delaware District:
See map attached (CX 249).

2. Names of Atlantic and Firestone personnel concerned with TBA in the Wilmington, Delaware District:

(a) Names of Atlantic personnel:

W. H. Quay—Region Manager—Eastern Pennsylvania Region.

R. W. Engle—Region Sales Group Manager—Eastern Pennsylvania Region.

R. B. Hamilton—Region Manager Direct Marketing—Eastern Pennsylvania.

G. A. Fearn—Region TBA Coordinator—Eastern Pennsylvania Region.

R. S. Zinn—District Manager, Wilmington, Delaware District.

T. E. Jones—Wilmington, Delaware District Sales Supervisor.

Promotable Dealer Salesmen

W. J. Raines
J. L. Sugg
W. C. Jordon
R. R. Klein
E. W. Martin, Jr.

Dealer Salesman

G. H. Stricker

Wholesale Salesmen

H. C. Hughes
E. H. Weer

406 Service Salesmen

C. A. Hayman
M. L. Davis
W. B. Tenley
J. E. Williamson
R. C. Zang, Jr.

(b) Names of Firestone personnel with whom Atlantic personnel of this District come in contact:

J. L. Cumming—District Manager
W. B. Jeffries—Manager Truck Tire Sales
E. C. Mewborn—Manager Truck Tire Sales (Alternate)
E. E. Pfeifer—Manager Stores
W. E. Hamlin—Manager Stores (Alternate)
W. W. Reynolds—District Credit Manager
A. A. Shaw—Regional Petroleum Representative

See also list of Firestone personnel for Atlantic's Baltimore, Maryland District.

Territory Salesmen

R. D. Daum
J. E. Sakers
C. Chapman

Store Managers

Arthur Alves

J. G. Gurganus

3. Names and addresses of Firestone supply points serving dealers and distributors in the Wilmington, Delaware District:

Buchanan's Firestone Store—Dover, Delaware

Buchanan's Firestone Store—Milford, Delaware

407 Cambridge Tire Center—Cambridge, Maryland

Easton Sales Company—Easton, Maryland

Firestone Tire & Rubber Co.—Baltimore, Maryland

Firestone Store—Salisbury, Maryland

Firestone Tire & Rubber Co.—1620 S. 49th St., Philadelphia

Firestone Store—Wilmington, Delaware

Laurel Home & Auto Supply—Laurel, Delaware

Hitchen's Auto Service—Wilmington, Delaware

John Salisbury**—Ridgely, Maryland

(** Present Atlantic Contract Dealer.)

4. Data on the nominations of Atlantic outlets in the Wilmington, Delaware District to Firestone as of June 30, 1956:

Type of Atlantic Outlet	Total Number of Atlantic Outlets	Number Covered by Form S-757†	Firestone Classification*	
			Dealers	Associate Dealers
(a) Lessee Dealers	92	92	2†	91†
(b) Contract Dealers	99	53	3	50
(c) Distributors	13	6		
(d) Customers of Distributors	81	0		

† Indicates the number of dealers regarded as potential TBA purchasers on whose purchases, if any, a commission will be paid, and not the number to whom sales were made. Does not include at least one customer of John Salisbury, who is an Atlantic supplying dealer.

* Information as to actual signing of franchise agreements is not available. It is believed that virtually all dealers covered by an S-757 and a majority of the customers of Atlantic supplying dealers sign at least an initial franchise.

408 †One lessee dealer has chosen to be both a Firestone Dealer and a Firestone Associate Dealer, presumably because each classification offers some advantages not afforded by the other. This dealer is included in both categories in these figures.

409 5. Total dollar sales of Firestone TBA in the Wilmington, Delaware District in 1955 on which Atlantic received a commission are shown below. There sales figures are the actual prices paid by the Atlantic dealer, regardless of whether he is classified by Firestone as a "Dealer" or "Associate Dealer". Because of variations in classification and prices no generalization can be made as to comparative price levels to Atlantic dealers and distributors.

Supply Points	Lessee and Contract Dealers				Distributors			
	Tires	Batteries	Accessories	Total	Tires	Batteries	Accessories	Total
Firestone District Office, Baltimore, Md.	\$ 73,118	\$ 6,176	\$ 18,253	\$ 97,547	\$100,004	\$ 949	\$ 23,748	\$125,091
Firestone Store, Salisbury, Md.	26,405	2,339	3,435	32,289	242	—	—	242
Huchman's Firestone Store, Dover, Del.	1,822	17	115	1,954	—	—	—	—
Hitchen's Auto Service, Wilmington, Del.	1,036	298	59	1,393	424	74	11	509
Laurel Home & Auto Supply, Laurel, Del.	1,063	431	689	2,963	—	—	—	—
Easton Sales Company, Easton, Md.	117	32	188	337	—	—	—	—
Firestone District Office, Philadelphia, Pa.	6,863	50	3,063	9,976	—	—	—	—
Firestone Store, Wilmington, Del.	107,869	16,896	19,653	144,415	305	13	171	489
Total	\$218,980	\$ 26,369	\$ 45,405	\$290,814	\$101,905	\$ 1,036	\$ 23,930	\$126,881
								\$417,745

* A breakdown between lessee and contract dealers can be obtained only by a costly and time-consuming analysis of voluminous records.

410 6. Names and addresses of Atlantic Distributors in the Wilmington, Delaware District who are covered by a Form S-757:

Clements Supply Company—Clayton, Delaware
Kellam Distributing Company—Belle Haven, Virginia

Walter H. Lister—Seaford, Delaware

Charles Marsh—Georgetown, Delaware

Serve U Oil Company—Fruitland, Maryland

Hammond & Taylor, Inc.—510 S. Market St., Wilmington, Del.

7. Names and addresses of Atlantic dealers whose source of supply for Atlantic petroleum products was at some time prior to June 30, 1956, changed from Atlantic to an Atlantic distributor. Dates of change are shown where available. All such dealers were contract dealers.

Dealers' Name—Address—Date

Greenville Betts—Stockley, Delaware—

F. Bowers—Milton, Delaware—February 1, 1955

David Bunting—Frankford, Delaware

G. Lewis—Roxana, Delaware

McGee & West—Selbyville, Delaware

Midway Service Station—Midway, Delaware

Horace S. Okie—Georgetown, Delaware

411 George L. Panyter—Rohoboth, Delaware

H. W. T. Purnell—Georgetown, Delaware

Seargeant & Tate—Oak Orchard, Delaware

Haas Brothers—R. F. D. Dover, Delaware—June 16, 1954

Walter T. Massey—Dover, Delaware

W. B. Donovan—701 Van Buren Street, Wilmington, Delaware—June, 1954

George Groff—Cambridge, Maryland

B. E. Harrington—Taylor's Island, Maryland—June 2, 1956

Ruth S. Johnson—Neavitt, Maryland

Mary McCarty—Tilghman, Maryland—February 1, 1955

Walter Horsey—Laurel, Delaware

8. Current addresses of Atlantic Training Facilities in the Wilmington, Delaware District:

Classrooms:

Young Men's Republican Club, 147 Market Street, Williamsport, Pennsylvania.

Training Stations:

P. S. Cillo, 4th and Washington Streets, Williamsport, Pennsylvania.

Ray. Zaner, 3022 W. 4th Street, Williamsport, Pennsylvania.

412 Harold Rhone, 1158 W. 4th Street, Williamsport, Pennsylvania.

K. G. Harman, 241 Broad Street, Montoursville, Pennsylvania.

Dale Dorsett, Washington Boulevard and Franklin Street, Williamsport, Pennsylvania.

9. Names and then current business addresses of dealers and distributors in the Wilmington, Delaware District whose relationships with Atlantic ceased in 1954 or 1955 under the circumstances indicated:

(a) Leases or contracts cancelled during their terms are shown below. In all cases, formal termination was either by notice of cancellation from the dealer, by mutual cancellation by the dealer and Atlantic, or by death of the dealer.

(i) Lessee Dealers:

Charles E. Banning, Washington and Water Streets, Milford, Delaware.

Robert Bruch, 205 French Street, Wilmington, Delaware.

George W. Bryan, Route 13, Farnhurst, Delaware.

William J. Carrigan, Routes 40 and 796, Glasgow, Delaware.

William E. Clark, James and Highland Streets, Newport, Delaware.

Mitchell Davis, 11th and Washington Streets, Wilmington, Delaware.

Harry Demitralis, 205 French Street, Wilmington, Delaware.

413 Leroy Derr, 205 French Street, Wilmington, Delaware.

Alexander Glass, 40th and Washington Streets, Wilmington, Delaware.

Alexander Glass, 3201 Concord Pike, Wilmington, Delaware.

Phil T. Harrison, Washington and Aurora Streets, Easton, Maryland.

Harry N. Hawes, 178 S. DuPont Road, New Castle, Delaware.

R. T. Hearn, Front and Central Avenues, Laurel, Delaware.

Harvey Hinrichs, 605 Vandever Avenue, Wilmington, Delaware.

William R. Hunt, Route 50 and Dover Road, Easton, Maryland.

Henry F. Jacobs, Concord Avenue and Tatnall, Wilmington, Delaware.

Wilbur W. Kirby, Route 113 and Plaza Boulevard, Dover, Delaware.

John C. Knight, 25th and Governor Printz, Wilmington, Delaware.

Wendall J. Marvel, Washington and Aurora Streets, Easton, Maryland.

Donald McBride, 5th and Rehoboth Avenue, Rehoboth, Delaware.

Robert W. Miller, Lancaster and Ford Avenue, Wilmington, Delaware.

414 George T. Mitchell, Millsboro, Delaware (Route 113).

Manlis K. Morris and William Howard Dennis, Main and Lang Streets, Salisbury, Maryland.

Andrew Poplos, 3201 Concord Pike, Wilmington, Delaware.

Robert E. Quillen, Governor Avenue and North Street, Dover, Delaware.

Aubrey H. Reed, 301 Philadelphia Pike, Wilmington, Delaware.

Woodall Sheats, 6th and Chestnut Streets, New Castle, Delaware.

Robert V. Sheridan, 4800 Governor Printz, Edgemoor, Delaware.

Oliver K. Smith, Route 13 and East State Street, Delmar, Maryland.

J. Harold Staats, Route 113 and Plaza Boulevard, Dover, Delaware.

Thomas J. Sullivan, Jr., 1602 Newport Pike, Newport, Delaware.

Wilmer G. Surgeson, Penn and First Avenue, Avondale, Pennsylvania.

Colin Thompson, 2530 Concord Pike, Wilmington, Delaware.

Ralph T. Toomey, Washington and Race Streets, Cambridge, Maryland.

415 James F. Tribbitt, Route 13 and Magnolia Road, Dover, Delaware.

William West, 2530 Concord Pike, Wilmington, Delaware.

Elton White, Pittsville, Maryland.

William A. White, Jr., Philadelphia Pike and Duncan Road, Wilmington, Delaware.

Robert Wickwire, 605 Vandever Avenue, Wilmington, Delaware.

Pres. Williams, Maryland Avenue, Salisbury, Maryland.

Maurice O. Wimbrow, Federalsburg, Maryland.

Graham S. Wood, 315 N. Maryland Avenue, Richardson Park, Delaware.

Thomas A. Worner, 4800 Governor Printz, Edgemoor, Delaware.

Thomas A. Worner, 2530 Concord Pike, Wilmington, Delaware.

(ii) Contract Dealers:

Fleetwood Sales Service, Route 13, Seaford, Delaware.

Bernard Taylor, Route 113, Pocomoke City, Maryland.

B. V. Whauton, Milford, Delaware.

John Lowsky, Stanton, Delaware.

Alfred Palmer, Naaman and Foulk Road, Wilmington, Delaware.

Sapp's Garage, Houston, Delaware.

416 N. B. Stapleford, St. Georges, Delaware.

E. M. Cope, South Third Street, Oxford, Pennsylvania.

Hastings Chevrolet Garage, Richardson Park, Delaware.

Franklin Currey, Harrington Road, Milford, Delaware.

(iii) Distributors: None.

(b) Leases or contracts expired and were not renewed because of either the individual decision of Atlantic or the dealer, or the mutual decision of both:

(i) Lessee Dealers:

Everett E. Alexander, 301 Philadelphia Pike, Wilmington, Delaware.

Edgar H. Cornman, New Castle Avenue, Rosehill, Wilmington, Delaware.

Edwin H. Erisman, 30th and Market Street, Wilmington, Delaware.

Frank Mohler, North Division Street, Salisbury, Maryland.

George H. Phillips, 4800 Governor Printz, Edgemoor, Delaware.

John R. Riffin, Sunburst Highway, Cambridge, Maryland.

Joseph Zakrzewski, 3201 Concord Pike, Wilmington, Delaware.

(ii) Contract Dealers:

W. C. Kilvington, Minquadale, Route 13, Delaware.
Witt & Bryden, Rock Hall, Maryland.

417 W. C. & Florence Angoe, Summitt Bridge, Delaware.
Mary Conner, Centerville, Delaware.

George H. Hoffecker, Route 13, Smyrna, Delaware.

(iii) Distributors:

Pearce Oil Company, Milford, Delaware.

(c) Circumstances are not indicated by available records:

(i) Lessee Dealers:

Leroy R. Dean, Route 113 and Plaza Boulevard, Dover, Delaware.

(ii) Contract Dealers:

Jarmon Garage, Berlin, Maryland.

(iii) Distributors: None.

10. Copies of "warning letters" sent to dealers and distributors in the Wilmington, Delaware District in the period April 1, 1950, through June 30, 1956, and any

subsequent correspondence between Atlantic and such dealers and Distributors.

(a) Warning letter of November 2, 1955 to

CX 250

Norris A. Stein, Lancaster and Ford Avenues, Wilmington, Delaware.

(b) Warning letter of February 7, 1956, to

CX 251

Alfred H. Trivits, East Side Route 13 and Oak Lane, Laurel, Delaware.

418 (c) Warning letter of December 21, 1956, to

CX 252

William A. White, Sr., 205-9 French Street, Wilmington, Delaware.

419 Baltimore, Maryland District.

1. Area comprising the Baltimore, Maryland District:
See map attached (CX 249).

2. Names of Atlantic and Firestone personnel concerned with TBA in the Baltimore, Maryland District:

(a) Names of Atlantic personnel:

W. R. Holland—Region Manager—Southern Region

J. G. Burns—Region Sales Group Manager—Southern Region

G. W. Brown—Region Direct Marketing Manager—Southern Region

E. M. Singleton—Region TBA Coordinator—Southern Region

H. M. Hathaway—District Manager—Baltimore, Maryland District

H. W. Martin—Baltimore, Maryland District Sales Supervisor

Promotable Dealer Salesmen

Richard D. Thomas
Walter V. McGee
Edwin H. Williams.

Service Salesmen

Joseph M. Bagley
Gilbert E. Moran
Harry W. Toy
William R. Simpson, III.

General Salesmen

Ira D. Crumbacker
Howard A. Frost
R. A. Mumper

420 (b) Names of Firestone personnel with whom Atlantic personnel of this District come in contact:

E. B. Harris*—District Manager
M. H. Pritcher*—Manager Truck Tire Sales
E. V. Hensley*—Manager Stores
J. C. Heid*—Manager Oil Company Sales
J. D. Gotshall*—District Credit Manager
A. A. Shaw—Regional Petroleum Represent

Territory Salesmen

W. D. Flora
T. D. Stevens
T. Wilson
J. Q. Leslie
W. C. Thomas
K. T. Hoover

Store Managers

J. D. Warfield
F. E. Lezon

* Personnel of Atlantic's Wilmington, Delaware District also come in contact with these Firestone personnel.

R. H. Powell
A. Johnson
R. C. Rose, Jr.
N. E. Nasser
H. E. Woodward
R. Brinkman

3. Names and addresses of Firestone supply points serving dealers and distributors in the Baltimore, Maryland District:

Al's Tire Service—Havre de Grace, Maryland
Automotive Supply Co.—Somerset, Pennsylvania
Bartgiss & Zimmerman—Frederick, Maryland
Dezen's—Cumberland, Maryland
W. F. Flood & Son—Annapolis, Maryland
Firestone Tire & Rubber Co.—Baltimore, Maryland
421 Firestone Tire & Rubber Co.—1620 South 49th Street,
Philadelphia, Pennsylvania
Firestone Store—Martinsburg, West Virginia
Firestone Store—Howard Street, Baltimore, Maryland
Firestone Store—604 Rhode Island Avenue, N. E.,
Washington, D. C.
Firestone Store—Edmondson Village, Baltimore,
Maryland
Firestone Store—Wilmington, Delaware
Firestone Tire & Rubber Co.—Baum Boulevard,
Pittsburgh, Pennsylvania
Firestone Store—Silver Spring, Maryland
Jack's Tire Service—Baltimore, Maryland
*Poffenberger Tire Co.—Hagerstown, Maryland
Southern Maryland Oil Co.—La Plata, Maryland
S. K. Osborne—Reisterstown, Maryland

* Present Atlantic Contract Dealer, classified as Atlantic supplying dealer. No customers are reported to have made purchases from him in 1955.

4. Data on the nominations of Atlantic outlets in the Baltimore, Maryland District to Firestone as of June 30, 1956:

422

Type of Atlantic Outlet	Total Number of Atlantic Outlets	Number Covered by Form S-757†	Firestone Classification*	
			Dealers	Associate Dealers
(a) Lessee Dealers	86	86	0	86
(b) Contract Dealers	61	34	3	31
(c) Distributors	7	5		
(d) Customers of Distributors	36	2		

423 5. Total dollar sales of Firestone TBA in the Baltimore, Md. District in 1955 on Which Atlantic received a commission as shown below. These sales figures are the actual prices paid by the Atlantic dealer, regardless of whether he is classified by Firestone as a "Dealer" or "Associate Dealer". Because of variations in classification and prices no generalization can be made as to comparative price levels to Atlantic dealers and distributors.

* Information as to actual signing of franchise agreements is not available. It is believed that virtually all dealers covered by an S-757 sign at least an initial franchise.

† Indicates the number of dealers regarded as potential TBA purchasers on whose purchases, if any, a commission will be paid, and not the number to whom sales were made.

Lessee and Contract Dealers* Distributors

Supply Points	Tires	Batteries	Accessories	Total	Tires	Batteries	Accessories	Total	Total
Firestone District Office, Baltimore, Md.	\$ 21,248	\$ 533	\$ 175	\$ 21,956	\$ 12,285	\$ —	\$ 1,215	\$ 13,500	\$ 35,397
Jack's Tire Service, Baltimore, Md.	1,024	584	—	1,608	—	—	—	—	1,008
S. K. Osborne, Reisterstown, Md.	984	92	37	1,113	—	—	—	—	1,113
Al's Tire Service, Havre de Grace, Md.	2,343	106	422	2,931	—	—	70	342	3,273
W. F. Flood & Son, Annapolis, Md.	515	278	442	1,235	272	—	—	—	1,235
Poffenberger Tire Co., Hagerstown, Md.	2,328	402	505	3,235	—	—	—	—	3,235
G. D. Armstrong, Daytonsville, Md.	114	—	17	131	—	—	—	—	131
Firestone Store, Edmundson Village, Baltimore, Md.	3,038	2,370	224	5,632	—	—	—	—	5,632
Firestone Store, Howard St., Baltimore Md.	72,622	8,901	18,956	100,569	—	—	—	—	100,569
Firestone Store, Martinsburg, W. Va.	1,826	333	38	2,197	—	—	—	—	2,197
Firestone Store, 604 Rhode Island Ave. NE Washington, D. C.	8,814	1,292	3,616	13,722	—	—	—	—	13,722
Bartgiss & Zimmerman, Frederick, Md.	19	—	94	113	—	—	—	—	113
Southern Md. Oil Co., La Plata, Md.	1,175	—	—	1,175	—	—	—	—	1,175
Firestone Tire & Rubber Co., 1620 So. 49th St., Philadelphia, Pa.	268	8	43	319	1,116	—	6	1,122	1,441
Firestone Store, Wilmington, Del.	1,660	375	270	2,254	1,136	—	5	1,141	3,395
Firestone Tire & Rubber Co., Baum Blvd., Pittsburgh, Pa.	2,719	774	9,770	13,263	583	289	318	1,160	14,423
Houser, Ronney, W. Va.	64	—	243	307	—	—	—	—	307
Dezen's, Cumberland, Md.	5,241	306	3,682	9,289	248	15	513	776	10,065
Auto. Supply Co., Somerset, Pa.	4,062	19	105	4,186	—	—	—	—	4,186
Total	\$130,613	\$ 16,583	\$ 38,639	\$185,235	\$ 15,640	\$ 274	\$ 2,127	\$ 18,041	\$203,276

* A breakdown between lessee and contract dealers can be obtained only by a costly and time-consuming analysis of voluminous records.

424 6. Names and addresses of Atlantic distributors in the Baltimore, Maryland District who are covered by a Form S-757:

Aero Oil Company—Frederick, Maryland
R. D. Rehmeier—Hereford, Maryland
Stup & Costello—Gaithersburg, Maryland
Alger Oil Company—Rising Sun, Maryland
C. C. Hinkle—Pittsburg, West Virginia

7. Names and addresses of Atlantic dealers whose source of supply for Atlantic petroleum products was at some time prior to June 30, 1956 changed from Atlantic to an Atlantic distributor. Dates of change are not available. All such dealers were contract dealers.

D. S. Pennington—Westminster, Maryland
Margaret Rowe—New Windsor, Maryland
Harold T. Willard—Thurmont, Maryland
David H. Young—Middletown, Maryland
John C. Strine & Sons—New Windsor, Maryland
Yeiser-Kindig—Union Mills, Maryland
John Covell—R. D. #1, Lewistown, Maryland
Warrenfelt Brothers Garage—Wolfsville, Maryland
E. E. Henkle—Millville, West Virginia
J. R. Norman—Elk Garden, West Virginia
George Parker—Cumberland, Maryland
Potomac Motors—Cumberland, Maryland
T. E. Schaeffer—Mount Storm, West Virginia
Charles C. Sullivan—Cumberland, Maryland
Eastern Grain Growers—R. D. #5, Hagerstown, Maryland
Nathaniel Gray—Halltown, West Virginia
Guy Mason—Ganotown, West Virginia
Hummer's General Store—Darlington, Maryland
425 John T. Henry—Summit Point, West Virginia
Raleigh Moore—Millsville, West Virginia

Mrs. J. C. Myers—Shenandoah Junction, West Virginia

E. G. Robinson—Inwood, West Virginia

Paul Rutherford—Bolivar, West Virginia

D. L. Whittington—Sheppards Town, West Virginia

Charles Kendal—Clarksville, Maryland

Highland Garage—Ashton, Maryland

A. H. Reed—North East, Maryland

Viola Tarbert—Perryville, Maryland

C. L. Foster—Hereford, Maryland

Govans Battery Co.—5708 York Road, Baltimore, Maryland

Fred Jones—Melton Road, Greenhaven, Maryland

William M. Francis—Baldwin, Maryland

L. B. Bishop—Monkton, Maryland

H. C. Krout—Maryland Line, Maryland

Walker's Garage—Upper Cross Road, Maryland

Harford Motors—Harford Road, Baltimore, Maryland

8. Current addresses of Atlantic Training Facilities in the Baltimore, Maryland District:

Classrooms:

1621 South Boulevard—Charlotte, North Carolina

Training Stations:

Robert H. Price—Freedom & Berryhill, Charlotte, North Carolina

Kon Knell—36th & The Plaza, Charlotte, North Carolina

9. Names and then current business addresses of dealers and distributors in the Baltimore, Maryland District whose relationships with Atlantic ceased in 1954 or 1955 under the circumstances indicated:

(a) Leases or contracts cancelled during their terms

are shown below. In all cases, formal termination was either by notice of cancellation from the dealer, by mutual cancellation by the dealer and Atlantic, or by death of the dealer, except for the case of Michael J. Clifford, in which notice of cancellation was given by Atlantic.

(i) Lessee Dealers

J. H. Bair, U. S. #301, North Charles Street, LaPlata, Maryland.

Lawrence E. Bowers, 34th & Keswick Road, Baltimore, Maryland.

Gerard S. Brenner, 106 Eastern Avenue, Essex, Maryland.

Gerard S. Brenner, 829 Eastern Boulevard, Baltimore, Maryland.

Olive I. Britner, Virginia Avenue & Englewood Avenue, Hagerstown, Maryland.

Edward L. Broom, 907 South Potomac Street, Hagerstown, Maryland.

Camer Carter, Reisterstown Road & Garrison Avenue, Baltimore, Maryland.

Brady B. Caudill, U. S. Route 40, Aberdeen, Maryland.

Charles V. Cearfoss, Ritchie Highway & Jumpers Hole Road, Elvaton, Maryland.

427 Michael J. Clifford, Park Heights & Garrison Avenues, Baltimore, Maryland.

Raymond E. Dabney, Joppa Road East of Loch Raven Boulevard, Baltimore, Maryland.

Raymond E. Dabney, 106 Eastern Avenue, Essex, Maryland.

H. E. Davis, 734 Potomac Avenue, Hagerstown, Maryland.

T. C. Eckhardt, Fleet & Flagley Street, Baltimore, Maryland.

William P. Edwards, U. S. Route 40, Aberdeen, Maryland.

Albert C. Fell, Harford & Overland Avenue, Baltimore, Maryland.

William Henry Fridinger, Jr., 907 South Potomac Street, Hagerstown, Maryland.

Hunter R. Lamb, 106 Eastern Avenue, Essex, Maryland.

Franklyn L. Layne, U. S. 301, Bel Alton, Maryland.

John Leabhart, Jonathan & Charles Streets, Hagerstown, Maryland.

Carroll E. Long, Reisterstown & Chatsworth Roads, Reisterstown, Maryland.

The M. G. K. Motor Co., Henderson Boulevard & Glenn Street, Cumberland, Maryland.

H. H. Marks, Joppa Road East of Loch Raven Boulevard, Baltimore, Maryland.

Joseph Brent Martin, U. S. 301 North of Charles Street, LaPlata, Maryland.

428 McAninch & Bills, U. S. 1 & Gorman Avenue, Laurel, Maryland.

Arthur E. Pittman, 34th & Keswick Road, Baltimore, Maryland.

Arthur E. Pittman, Reisterstown Road & Garrison Avenue, Baltimore, Maryland.

Teddie Rhone, Reisterstown Road & Garrison Avenue, Baltimore, Maryland.

Joseph L. Rohrer, Jonathan & Charles Streets, Hagerstown, Maryland.

Cornelius S. Rometry, Liberty Heights & Howard Park Avenues, Baltimore, Maryland.

Raymond J. Rosendale, Reisterstown Road & Garrison Avenue, Baltimore, Maryland.

S. & S. Tire Co., 630 West Franklinton Road, Baltimore, Maryland.

James F. Schafer, 6510 Harford Road, Baltimore, Maryland.

Joseph K. Shaner, Jonathan & Charles Streets, Hagerstown, Maryland.

Donald T. Sinieropi, U. S. 1, South, Laurel, Maryland.

Raymond P. Sipes, Virginia & Englewood Avenues, Hagerstown, Maryland.

George J. Smith, Jr., Governor Ritchie Highway, Glen Burnie, Maryland.

Paul L. Stewart, Jonathan & Charles Streets, Hagerstown, Maryland.

429 Victor H. Strother, Park Heights & Garrison Avenues, Baltimore, Maryland.

Stanley E. Teter, Reisterstown Road & Slade Avenue, Pikesville, Maryland.

Raymond Viands, Jonathan & Charles Streets, Hagerstown, Maryland.

M. F. Waters, 734 Potomac Avenue, Hagerstown, Maryland.

Homer A. Welsh, 638 Green Street, Cumberland, Maryland.

(ii) Contract Dealers:

Fred Bloomquist, U. S. 40, North East, Maryland.

E. A. Gray, Nottingham, Pennsylvania, Route 1.

Russell S. Myers, Fairplay P. O., Maryland (Tilmington, Maryland).

Ramsburg Supply Co., Edmondson Avenue Ext., Ellicott City, Maryland.

(iii) Distributors:

None.

(b) Leases or contracts expired and were not renewed because of either the individual decision of Atlantic or the dealer, or the mutual decision of both:

(i) Lessee Dealers:

Julius H. Finkle, 100 Compromise Street, Annapolis, Maryland.

430 (ii) Contract Dealers:

Gatto Chevrolet Sales, Havre De Grace, Maryland.

Kindle & Griffith, R. F. D. Keddysville, Maryland.

Mrs. E. V. Peltzer, 514 Main Street, Reisterstown, Maryland.

Smouse & Wambaugh, R. F. D. 1, Hyndman, Pennsylvania.

Joseph Spencer, U. S. 301, Wells Corner, Upper Marlboro, Maryland.

(iii) Distributors:

None.

10. Copies of "warning letters" sent to dealers and distributors in the Baltimore, Maryland District in the period April 1, 1950 through June 30, 1956, and any subsequent correspondence between Atlantic and such dealers and distributors.

Copies of the following are attached:

(a) Warning letter of May 2, 1955 to:

Berman and Shor

Reisterstown Road & Fordleigh Lane

Baltimore, Maryland (CX 253)

(b) Warning letter of December 8, 1953

Termination Notice of January 4, 1954 to:

Michael J. Clifford

Park Heights and Garrison Avenue

Baltimore, Maryland (CX 254-A, B)

440 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, before we call our first witness, I would like to make a statement with respect to several documents in the record.

With respect to the documents in the record referred to or identified as Commissions' exhibits 255 to 272, inclusive, appearing on pages 379 through 383 of the record, it should be noted that they were all of the warning letters sent by Atlantic during the period June, 1950, through June, 1956, to which dealers in the three marketing regions in which the Goodyear TBA sales commission plan was in effect.

It should also be noted that warning letter was sent to Mr. Robert R. Esposito, Morris Avenue, Morrison Road, Springfield, New Jersey, but that the papers are unavailable because the file was inadvertently destroyed.

It should also be noted that the data requested in item 7 for the Wilmington, Delaware and Baltimore districts appearing at pages 410 and 424 respectively of the record was for the period April, 1950, through June 30, 1956.

I would like to call Mr. George Hill to the stand, please.

GEORGE J. HILL, JR., was thereupon called as a witness for the Commission, and having been duly sworn, testified as follows:

441 *Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. George J. Hill, Jr., 112 Julianna Terrace, Collingdale.

Q. Are you here in response to a subpoena?

A. Yes, sir.

Mr. Kelaher: Will you hand your subpoena to the Examiner.

The Witness: (Handing.)

By Mr. Kelaher:

Q. Mr. Hill, were you at one time an Atlantic leasee dealer?

A. Yes, sir.

Q. Will you please state the period during which you were an Atlantic leasee dealer?

A. August 1949 to December 1956.

Q. And please state the location of your station.

A. McDade, below Chestnut Street, in Darby, Pennsylvania.

Q. Now beginning in 1949, would you please state what TBA products you sold?

A. Lee of Conshohocken tires, Exide batteries, Fram filters, Dupont products, chemical products, and Thermoid fan belts, Thermoid hoses.

Q. From whom were such products purchased?

A. From Edward Parris.

Q. And where was Mr. Parris located?

A. At that time at Clifton Avenue on Chester Pike in Sharon Hill.

442 Q. And for how long a period did you carry the products you just named? Up until what time?

A. From the time I had started into the station.

Q. And did you then subsequently carry Goodyear TBA?

A. Yes, sir.

Q. When did you begin to carry Goodyear TBA?

A. I believe it was in March of 1951, but I am not definitely sure.

Q. And in or about that time, did you attend an Atlantic dealer meeting?

A. I did, sir.

Q. And where was the location of that meeting?

A. 69th Street, at a restaurant, I believe Kostik's.

Q. Who were present at that meeting?

A. I would say in the neighborhood of approximately 40 dealers, Goodyear representatives, and also Atlantic.

Q. Were those 40 dealers you referred to Atlantic dealers?

A. Yes, sir.

Q. And what transpired at that meeting?

A. We had a training film showing the various qualities of the Goodyear tire and sponsoring the program they were about to set up on Goodyear merchandise and batteries.

Q. At that time was it announced that Atlantic was to sponsor the Goodyear TBA line?

A. Yes, sir.

443 By Mr. Kelaher:

Q. Mr. Hill, what was the purpose of the meeting just referred to?

A. My impression was to get across the quality and construction of the Goodyear merchandise and to show how the program would actually work and be a better product, sell better.

Q. Did Atlantic at that time state that it was going to sponsor Goodyear TBA, if you know?

A. Yes, sir.

Q. After the meeting in question, Mr. Hill, what brand of TBA or what TBA line did you begin to carry?

A. Well, in the beginning I had a sufficient stock of Lee—in fact, I had about 75 to 80 tires and I didn't buy Goodyear tires right off the bat because I was concerned about what I had in stock.

444 Now in a few incidents we run into such as filters and such where as I run out of one, I replace it with the other, but it wasn't a mass change-over.

Q. When you say replace it with the other, what do you mean?

A. They carried AC and Purolator.

Q. By "they," who are you referring to?

A. Atlantic, but—

Q. Who did you begin to purchase—

Mr. Thompson: (Interposing) He didn't finish his answer.

Mr. Kelaher: Excuse me.

A. I would say Atlantic was—it was actually through Ed Parris, the same distributor that we had with Lee.

By Mr. Kelaher:

Q. Do I understand you to say that Mr. Parris then became the Goodyear TBA supplier?

A. Yes, sir, TBA distributor.

Q. Now, you stated that you continued to carry Lee tires. Were you satisfied with carrying Lee tires—

A. Up until that point I was happy with them because they had a road hazard guarantee and they were cheaper in price and we made a little more money on them.

Q. Did the Goodyear tire have a road hazard guarantee?

445 A. No, sir.

Q. Was the Goodyear tire price higher than the Lee price?

A. They were higher because you didn't quite get the discounts we got with Lee.

Q. I see. Now did you have any tire signs hanging in your station when you entered the premises in August of 1949?

A. I did.

Q. What type of signs did you have?

A. The outdoor, big sign, that was electrically lit up.

Q. Do you know of your own knowledge how long that sign had been at that particular station?

A. Well, I have been in that neighborhood since 1937 and it was there when I come in the neighborhood.

Q. After you changed—or rather, after March of 1951, was the Lee sign still on the premises, in March 1951?

A. In March 1951, I believe it was still on the premises.

446 Q. Were you advised by anyone that the Lee sign was to be taken down?

A. Yes, sir.

Q. Who advised you?

A. Lee of Conshohocken.

Q. And what did Lee of Conshohocken represent to you?

A. They told me they had word to take the sign down.

Q. Who gave them the word?

Mr. Thompson: That is objected to.

Mr. Kelaher: I will rephrase the question.

By Mr. Kelaher:

Q. State the substance of the conversation between you and the Lee of Conshohocken representative.

A. Larry Deemer from Lee, the Branch Manager, asked me if I wanted the sign taken down. They had word to have it removed.

Q. And did he indicate whom he had received the word from?

A. No.

Mr. Thompson: It doesn't matter what was indicated.

The Witness: (Continuing) And he asked me if I wanted to fight the issue and I said "no."

By Mr. Kelaher:

Q. You said "no." What happened thereafter?

447 A. The sign was removed.

Q. And was it replaced by another type of sign?

A. Goodyear.

Q. And were you permitted thereafter, or did you thereafter advertise Lee tires?

Mr. Thompson: Which question are you asking?

Mr. Kelaher: I will withdraw the first one.

By Mr. Kelaher:

Q. Did you thereafter advertise Lee tires?

A. Nothing other than the tire stands.

Mr. Correa: I didn't hear that.

The Witness: Nothing other than the tire stands.

By Mr. Kelaher:

Q. Where were the tire stands located?

A. In front of the station with tires.

Q. Did you have thereafter any signs advertising—

A. (Interposing) Outside, no, sir.

Q. —(Continuing)—Lee tires.

Why didn't you advertise Lee tires thereafter?

A. Well, I had, as I say, a pretty heavy stock and I was trying to pair them off and I would have to buy tires in between to try to match them up in pairs to get rid of them. But I had no advertisement other than the tire stands when the change-over was made.

Q. Did you ever attempt to advertise Lee tires after that time?

448 A. No, sir.

Q. Why didn't you?

(After pause.)

Q. You may answer the question:

A. I really don't know. I mean, I just felt that I didn't want to buck the issue.

By Mr. Kelaher:

Q. After March 1951 was any other advertising placed on your premises with respect to TBA?

A. Decals in the top of the windows, with Goodyear on them. And of course the original Goodyear tire sign.

Q. So your station was identified as Goodyear TBA thereafter, is that correct?

A. That is right.

Q. Do you know approximately the value of the stock of Lee tires you had on hand in or about March, 1951?

A. Rough guess, about a thousand dollars, I would say.

Q. Thereafter, who was your primary supplier of TBA products?

A. Mr. Ed Parris.

Q. And what line did you purchase from him?

A. Goodyear batteries, tires, AC filter, and he still had Dupont products. We had Goodyear fan belts 449 in place of Thermoid and Goodyear hose in place of Thermoid.

Q. Did you have any Thermoid fan belts on hand when the change-over occurred?

A. Yes, sir, they were re-sleeved. In other words, they put the Goodyear numbers on them for us.

Q. They put the Goodyear brand name on them too?

A. Yes, and they re-sleeved them to the Goodyear numbers.

Q. Now did you pay for your advertising from Lee?

A. No.

Q. Did you pay for your advertising, the advertising furnished by Goodyear?

A. Yes.

Q. Did you do a credit card business, Mr. Hill?

A. Yes, sir.

Q. Incidentally, about what was your gallonage at your station?

A. 32,000 to 35,000.

Q. Were you one of the larger dealers in that area?

A. Maybe the largest in Darby.

Q. And approximately how much of your business was on credit, do you recall?

A. Well, I always felt proud to say about one hundred dollars a day.

Q. That would be approximately how much of your overall business, percentage-wise?

450 A. Twenty-five percent.

Q. During the period you were in the station, when you originally went into the station, what was the term of your lease?

A. One year. The original lease, I believe, was only six months and then I got a year.

Q. And were there rent increases during that period?

A. Definitely.

Q. How often did the rent increases occur?

A. Well, I would say once a year, on the average. That is, as the station progressed.

Q. Do you recall one occasion where your rent was raised to a minimum of \$100?

A. Yes, I do.

Q. Would you please state what happened at that time?

A. Well, in that particular case it was raised over \$100 as a minimum and I protested it and was quite put out about it, but it didn't do me a lot of good to protest it. I didn't get anywhere and when I was done, why, I signed a lease and forgot about it.

Q. Do you recall what that increase was from, what your prior rent was, before it hit \$100 minimum?

A. No I don't, sir.

Q. Do you recall when your last lease was entered into?

A. The end of 1954.

451 Q. And do you recall the circumstances surrounding the signing of it?

A. Well, I was handed a lease on the last day of the month in the afternoon and they told me I had to get it back in the mail by that night to make it legal.

Q. When?

A. Have the lease back in the mail by that night and I had very little time to look over the lease. It was on the last day of the month and I signed a three-year lease thinking it was a one-year lease, and didn't know it.

Q. How many hours, approximately, did you have to make up your mind?

A. Four and a half to five hours. I had to look it over while work was still going on and it was a pretty busy afternoon.

Q. How many hours did you keep your station open from the time you entered into business?

A. Twenty-four hours a day.

Q. Was there ever a time when you desired to reduce the number of hours of station operation?

A. Well, in 1955 business started to drop on the last shift, I mean the business was doing just about as well, but the expenses had gone up, manpower, rent, overhead, light and heat, so the station for the next two years just stood at a standstill, financially, and I would operate that night shift at probably about a \$5.00 a day loss, by
452 my figures. So I would liked to have dropped that shift, but I couldn't get together and couldn't get permission to drop it.

Q. Permission from whom?

A. From the Atlantic representatives to drop it.

Q. Do you recall—

Mr. Thompson: (Interposing) I object to this line of questions and answer and ask they be stricken unless there is a specific identification of who in Atlantic talked

to him and what was said. The testimony that Atlantic wouldn't give permission is just a conclusion of this witness, and meaningless on the record.

Mr. Kelaheer: I intend to develop this further, your Honor.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: I should like to object to this entire line on behalf of the respondent Goodyear on the ground that all of this is res inter alios acta.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaheer:

Q. Mr. Hill, do you recall a conversation with Atlantic representatives in connection with the incident you are now referring to?

A. Well, I run into a problem on my night shift with manpower—

453 Mr. Correa: The question was "Do you recall."
I move the answer be stricken.

Hearing Examiner Kolb: Read the question.

(Question read.)

A. Yes.

By Mr. Kelaheer:

Q. Would you please state the circumstances, the conversation, rather, and identify the other party.

A. Stephen Petrison, the Atlantic salesman.

Q. Now would you please state the conversation?

A. Well, I was telling him about my problems on the night shift, that I thought I would have to close the station at those hours, that I couldn't make them pay. He said, well, he thought that the company wouldn't go for a closing at night time and he thought if I had any ideas like that, that it would be best to give up the station, sooner than run into trouble, more or less leave the station

if I thought I would have to close it. They thought that the station should be open.

Q. What happened after that?

A. Well, I didn't make up my mind at that time. That was around Labor Day, and I went on another month and a half before I actually decided to give up the station.

Q. When did you give up the station?

A. I signed a mutual cancellation in October of 1956.

454 Q. Mr. Hill, referring back to the meeting at Kostick's in or about March 1951, do you recall whether Atlantic representatives stated that you had your choice of the brand of TBA you could carry?

A. I don't really remember, sir.

Q. And you stated that there were approximately 40 other dealers, Atlantic dealers, present at that meeting?

A. That is right.

Q. Now based on your own knowledge, do you know whether those other Atlantic dealers changed over to the Goodyear TBA line at the time you did?

A. I only know a few personally. I mean, I know a lot of them to see them, but I only knew maybe 10 or 12 personally. They changed, of course.

By Mr. Kelaher:

Q. At that time, Mr. Hill, did you have any reason for discontinuing the sale of Lee tires?

A. For discontinuing the sale?

455 Q. Yes, sir.

A. Yes. In order to purchase the tires, I had to purchase them from Bryn Mawr and in order to adjust the tires, I had to adjust at Bryn Mawr and we would lose an hour's time every time we had a—

Q. I am referring to the March 1951 meeting, up to that time you were—

A. (Interposing)—Satisfied with them.

Q. You were satisfied with Lee tires?

A. That's right.

Q. Mr. Hill, before the change-over to Goodyear, I believe you stated you were buying Lee tires from Mr. Parris, is that correct?

A. That is true.

Q. And would the adjustment be made—

A. (Interposing.) Be done by Mr. Parris.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross examination?

Mr. Thompson: Atlantic Refining has no questions, sir.

Mr. Correa: We have none, if your Honor please.

Hearing Examiner Kolb: That is all, Mr. Hill.

(Witness excused.)

Mr. Kelaher: Mr. Examiner, I would like to call Mr. Heller.

456 EDWARD C. HELLER was thereupon called as a witness for the Commission, and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. Edward C. Heller, 55th and Walnut, 5500 Walnut, Philadelphia, Pa.

Q. And the name of your company?

A. E. P. Rotzell Company.

Q. Will you describe your company's business, please?

A. Hard parts, accessories, service station, garage, car dealer equipment.

Q. How about—

Mr. Thompson: (Interposing.) May I have that answer read? I couldn't follow that.

Hearing Examiner Kolb: Read the answer please.
(Answer read.)

By Mr. Dias:

Q. Are you familiar with the term "TBA"?

A. Yes, sir.

Q. Do you know what that includes?

A. Yes, sir.

Q. Does your company handle tires?

A. No tires.

457 Q. How about batteries?

A. Yes, sir.

Q. Will you name the brand of batteries?

A. Delco.

Q. Have you always carried Delco batteries?

A. No, sir.

Q. How long have you carried them?

A. A little over a year.

Q. And prior to that time—

A. (Interposing.) Willard.

Q. How long did you carry Willard?

A. Prior to my coming with the company.

Q. How long was that?

A. Well, I came with the company seven years ago.

Q. Have you been a salesman with Rotzell for those 7 years?

A. That's right, sir.

Q. How about filters, what brand of filters?

A. Purolator.

Q. And have you carried those for the full seven years?

A. Yes, sir.

Q. How about belts and hoses?

A. Durkee-Atwood.

Q. Spark plugs?

A. Champion.

Q. Chemicals?

458 A. The Dupont chemical line.

Q. What class customer does the Rotzell Company solicit?

A. Service stations, independent repair shops, garages, car dealers.

Q. What is the company's general trade area, do you know?

A. In what way?

Q. The company as a whole, the Rotzell Company, where do they sell?

A. All over the city of Philadelphia, Delaware County.

Q. Is that the entire trading area of the company?

A. Well, they do sell some over in Jersey, through the office, but that isn't in the salesmen's category.

Q. How many salesmen are employed?

A. Five.

Q. And how are they compensated, salary or commission?

A. Straight commission.

Q. Does Rotzell Company offer delivery service?

A. Yes, sir.

Q. How many trucks do they operate for that purpose?

A. Five.

Q. How many does the Rotzell Company—does the Rotzell Company have any branches?

A. Yes, sir. We have the main store and four branches.

Q. Can you give the addresses?

A. 18th and Christian—

459 Q. (Interposing.) Is that the main store?

A. No, the main store is 1627 Fairmont Avenue; the branch at 18th and Christian, one at 55th and Walnut,

and one on Lancaster Pike in Ardmore and one 6118 Germantown Avenue.

460 Q. Now, what is your particular sales territory?

A. West Philadelphia and eastern Delaware County.

Q. And do you solicit service stations?

A. Yes, sir.

Q. Are there any Atlantic stations in your sales territory?

A. Yes, sir.

Q. Do you sell batteries or accessories to any of those Atlantic stations?

A. Very very little.

Q. Do you have any regular accounts among the Atlantic stations?

A. Yes.

Q. Can you state how many?

A. Probably four or five of them.

Q. Can you tell us how many stations, Atlantic stations, there are in your sales territory?

A. Probably around 30, 35.

Q. Have you called on the 35 or 40 from time to time?

A. I have.

Q. And can you give us some idea how often you called upon them?

A. Well, I may, if I start to call on a new customer, I may call on him five or six weeks, straight in a row, if I see nothing, then I drop it and maybe once every two weeks, if I still get no business, then I drop down to 461 a month and after that I forget about it.

Q. I see. And how many stations would you say you sell to regularly, Atlantic stations?

A. Oh, in hard parts, such as king pins and bushings, mufflers, tail pipes, those items, I have four or five Atlantic customers that buy. But nothing in the TBA line.

Q. Now, on these Atlantic stations, that buy these hard parts, do you try to sell them batteries and accessories?

A. Yes, sir, I have.

Q. And how about the others, do you solicit their business for batteries and accessories?

A. Yes, sir.

Q. These stations, these Atlantic stations in your sales territory, do you recall the type, or do they carry TBA?

A. Yes, sir.

Q. And do you recall the brands that are advertised by the stations?

A. Goodyear tires, batteries.

Q. Is that true of all of them?

A. (Continuing.) Du Pont Chemicals.

Q. And is that true of all the stations, all the Atlantic Stations?

A. In my area, yes, sir.

Q. Have you ever called on a new Atlantic station? Have any new Atlantic stations opened in your sales territory.

462 A. Yes, sir.

Q. And have you called on those new stations?

A. Yes, sir, I have.

Q. How soon after they opened?

A. Oh, I try to watch and call within the week.

Q. And have you ever sold anything to those stations?

A. Some jacks, equipment that he may need, tire tools, or jacks that he may need for the driveway service.

Q. Have you sold them batteries or accessories?

A. No, sir.

Q. Have you called on new operators of old stations?

A. Yes, sir.

Q. And what has been your experience with those?

A. Practically the same.

Q. Now, on those new stations that opened up, did they have TBA supplies?

A. Yes, sir.

Q. Do you recall the brand they had?

A. Goodyear tires and batteries.

Q. And did the new operators of old stations have TBA on their premises?

A. That is right.

Q. And what was it?

A. Same brands.

Q. Do you recall any Atlantic stations that purchased your TBA line at any time and then subsequently discontinued?

A. Well, a year or so ago we had the Du Pont Chemicals representative with us and we were the first ones to have him in the city of Philadelphia. I sold a couple of the Atlantic dealers, fellows I had known, and I ran into an Atlantic salesman later on, and after that, I had no more sales of the Du Pont Chemicals. As one dealer told me, that he was to save it for the Atlantic salesman the next time he came around.

Mr. Thompson: I object to it and move the answer be stricken unless it makes the test laid down by your Honor, of identification of the time, place and names.

By Mr. Dias:

Q. Can you recall the name of the dealer and the time this was told to you?

A. I can't recall the dealer, but I know the salesman, Joseph Snyder, with the Atlantic Refining Company.

Q. Now, the dealers, you don't recall his name? Where was his station, do you recall that?

A. Fifty-five and Walnut.

Q. And can you give us a time, approximately that that occurred?

A. You mean the date?

Q. The date that he told you he—

A. No, I couldn't. I couldn't.

464 Q. Well, you stated about a year ago, did you not?

A. Yes it was about a year ago. It was—if I had to give you the month or the—the month that it happened. I couldn't. But that particular—it was not this past Spring, Spring a year ago, we had the Du Pont Chemical man with us first rather than the Atlantic salesman. They come in the Spring of the year and work with each one of their jobbers, with their jobber salesmen, their merchandising men, they try to help the salesmen in each territory put over that particular product.

Q. Are there any Atlantic stations in your sales territory that advertise other than Goodyear TBA?

A. Only independents.

Q. And what is an independent?

A. Where he owns his own property.

Q. Do you know of any that fit that category?

A. Yes, sir, I do.

Q. Can you name them for us?

A. Frank Myers, 57 and Pine, Joe Klein at 38th and Walnut, and Rabins Brothers at 38th and Girard.

Q. And what do those stations advertise in the TBA line?

A. Frank Myers is Lee tires and Lee batteries, so is Joe Klein, Rabin Brothers is Lee tires, but batteries I couldn't tell you what their brand battery is.

Q. Do you know who the Goodyear supplier is in 465 your sales territory?

A. There is two or three of them.

Q. Can you name them?

A. Frank Hagan, Ernie Miller, Ed Parris fringes my territory.

Q. Can you give us some addresses?

A. Frank Hagan is 54th and Chester Avenue, Miller is

on Garrett Road in Upper Darby, and Ed Parris is out on Sharon Hill or Glenolden, I don't know which he is now.

By Mr. Dias:

Q. Are you in competition in the sale of these TBA items with Messrs. Hagan and Miller and Parris?

A. Yes, sir.

Q. Do you offer delivery service to these accounts?

A. Yes, sir.

Q. How often do you give them delivery service?

A. Why, I have seen customers get delivery service as high as four or five times within one day.

Q. Now, if you know—

466 Mr. Thompson: I move the answer be stricken as non-responsive.

Hearing Examiner Kolb: Read the question and answer.

(The reporter read the question and answer as follows:

“Question: How often do you give them delivery service?

“Answer: Why, I have seen customers get delivery service as high as four or five times within one day.”)

Hearing Examiner Kolb: Were you referring to his delivery service—

Mr. Dias: Delivery service, his own company.

Mr. Corrae: His question was what do they offer, not what is received.

Mr. Thompson: Not that he sent—

Hearing Examiner Kolb: I will overrule it and let it stand.

By Mr. Dias:

Q. Are you familiar with the Goodyear battery, Mr. Heller?

A. In what way, I am familiar with the battery, yes.

Q. Have you had any occasion to compare your battery with theirs?

Mr. Correa: I ask that the witness be instructed to answer that yes or no, because I will object to any
467 expansion on this until the witness is qualified.

Hearing Examiner Kolb: Answer yes or no.

The Witness: Only as far-as price-wise, to sell a dealer.

By Mr. Dias:

Q. How does your battery compare price-wise?

A. Competitive.

Q. And by that what do you mean? Competitive price-wise with Goodyear is the same less or more?

A. One battery could be more, another a little less, but I think over the whole line, they would be very competitive.

Q. Mr. Heller, referring to these Goodyear supplier points, Mr. Frank Hagan, does he compete with you and do you compete with him in your entire sales territory?

A. No, well, I think he has a certain amount of service stations that he is supposed to take care of. I don't know how their set up is as far as knowing how many dealers he has or what his territory is. I don't know.

Q. You don't know. Is that same true of Ernie Miller?

A. That is right.

Q. You don't know.

A. I don't know what their area or territory would comprise.

Mr. Dias: That is all, your Honor.

468 Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

469 Hearing Examiner Kolb: The hearing will come to order.

Cross examination.

Cross-Examination by Mr. Thompson.

Q. Mr. Heller, are you familiar with the over-all business of the Rotzell Company?

A. Yes, sir.

Q. You have a subsidiary that operates out the main line; haven't you?

A. That's one of our branch stores.

Q. One of your companies?

A. That's right.

Q. As a matter of fact, sir, isn't it true that your company was just incorporated a year or two ago and succeeded to another company that had been operated by Mr. Rotzell?

A. That's right, sir; he passed away and Mr. MacPherson took it over.

Q. Mr. MacPherson took it over?

A. That's right.

Q. In recent years your company has been doing very well, has it not?

A. Yes, sir.

Q. Do you ever see the Dunn and Bradstreet reports on your company?

470 A. No, sir; I have not.

Q. Am I correct in my understanding that the volume of your sales and your profits have been substantially increasing in the last few years since Mr. MacPherson took it over?

A. That I couldn't say; I don't get into the books that—

Q. In dealing with service stations generally, do you offer to sell them on cash or do you give them credit?

A. We have both.

Q. Does that depend upon the appraisal of the financial standing of each of the prospective customers?

A. I take a credit statement and turn it into the office and it's up to the office to pass them on credit.

Q. Now, when you say you take a credit statement, do you mean you ask each of the service stations whom you solicit to give you information with respect to his own financial standing?

A. No, not his financial standing.

Q. Well, how do you determine when you solicit a service station whether it be Atlantic or any other one, whether you are going to offer to sell him for cash or for credit?

A. I ask him if he would like to have an open account and if he gives us the references that our office will open the account it's opened for him for credit.

Q. Could you tell us approximately how many of the Atlantic accounts you have solicited you have offered to sell on credit?

471 A. Twelve or fifteen of them.

Q. And there are 30 to 40 in your own particular sales area?

A. That's right, sir.

Q. Now, going back, if I may, to three of the service stations whom you called "independent"—

A. Independent, that's right, sir.

Q. I think you said they owned those stations?

A. That's right, sir.

Q. Did you mean that they owned them or that Atlantic does not own them?

A. They own them—those three own them themselves.

Q. And they are what are sometimes referred to as ^{contract dealers}

Q. Are you familiar with that?

A. Not as contract dealers, but as independent dealers.

Q. Do you solicit those three accounts?

A. Yes, sir.

Q. Are they regular customers of yours?

A. Yes, sir.

Q. What do you sell them?

A. Hard parts, chemicals and accessories.

Q. Do you sell them batteries?

A. Fill-in batteries. I have sold all three of them batteries.

472 Q. By fill-in batteries, you mean special order?

A. Yes.

Q. They don't buy batteries regularly from you?

A. Not regularly; no, sir.

Q. Approximately how many active accounts does your company have in all of Philadelphia and Delaware County, do you know?

A. No, I do not.

Q. How many active accounts do you personally handle in your sales territory?

A. About 120.

Q. And those are in various categories, I assume, of the type you have mentioned, some garages?

A. That's right, sir.

Q. Some commercial accounts, or don't you handle them?

A. No, we have a regular fleet commercial man that calls on nothing but those accounts.

Q. Do the five trucks owned by the company handle deliveries to all of the Philadelphia and Delaware County area in which you operate?

A. Yes, sir.

Q. They certainly couldn't make four or five deliveries to very many of them, could they?

A. Each store has his own truck.

Q. Each store has one truck?

A. That's right. Each store has one truck.

473 Q. And your particular store is—

A. Fifty-fifth and Walnut.

Q. And out of that store you handle deliveries to West Philadelphia and Delaware County?

A. That's right, sir.

Q. And one truck attempts to service that whole geographical area?

A. That's right, sir.

Q. Would you mind telling me what you are talking about when you refer to hard parts because the phrase is new to me and I don't quite understand it.

A. King pins, brakes, wrist pins, rings, upper pins and bushings on the front end, coil spring, motor and chassis parts.

Q. It's the sort of equipment which is used for minor repairs of automobiles?

A. That's right, sir.

Q. Is that type of business also handled by Suburban Auto Parts Company?

A. Yes, sir.

Q. That company, then, is covering the same area that you sell to, is it not?

A. No, sir; they come to City Line and go from there West.

Q. In other words, they operate in Montgomery County?

A. That's right, sir.

474 Q. And you handle Delaware County?

A. That's right, sir.

Q. Yours is an extremely competitive business, is it not?

A. Yes, sir.

Q. Do you know how many companies there are that are attempting to sell hard parts and accessories in West Philadelphia and Delaware County?

Mr. Dias: I object to the form of the question, to the use of the word "attempting".

Hearing Examiner Kolb: The objection will be overruled.

Mr. Dias: I think Commission's Counsel is restricted to the phrase "sell to".

Mr. Thompson: I shall be happy to rephrase the question, sir, if there is any objection at all on the part of the staff.

By Mr. Thompson:

Q. Do you know about how many companies competing with Rotzell solicit accounts in West Philadelphia and Delaware County?

A. Probably 15 or 18 of them, maybe more.

Q. Thank you, that's all I had.

Mr. Correa: I have no questions at the moment.

Mr. Thompson: Thank you so much, sir.

Hearing Examiner Kolb: Any further questions?

475 Mr. Dias: Just a minute.

That's all, your Honor.

Hearing Examiner Kolb: That's all, Mr. Heller. Thank you very much.

(Witness excused.)

Mr. Kelaher: May we go off the record, your Honor?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. The hearing will come to order.

Mr. Kelaher: Mr. Examiner, counsel for respondent Goodyear and counsel supporting the complaint have entered into a stipulation with respect to the testimony of appropriate officers and employees of Goodyear if called as witnesses in this matter.

This stipulation will make it unnecessary to call officers and/or employees of respondent Goodyear in so far as we know at this time. However, it's clearly understood that this does not foreclose counsel supporting the complaint

from calling such officers and employees of respondent Goodyear if circumstances later dictate. In that connection I would like to state that we are presently attempting to stipulate further testimony in the matter with respect to counsel for respondent Goodyear.

I would also like to add that counsel for respondent 476 Goodyear have cooperated fully in preparing this stipulation and along with the stipulations we have entered into with counsel for respondent Atlantic we feel that they have greatly expedited the trial of this matter.

At this time I would like to have the stipulation read into the record.

Hearing Examiner Kolb: You may proceed.

Mr. Correa: No objection.

Mr. Kelaher: United States of America, Before the Federal Trade Commission.

In the Matter of The Goodyear Tire and Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

Stipulation Re Testimony of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

It is hereby stipulated and agreed by counsel for the respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., and by counsel supporting the Complaint that if appropriate officers and employees of said respondents were called as witnesses by counsel supporting the Complaint in this proceeding, they would testify in the manner set forth below, and that the facts stated below may be accepted by the Commission for the purpose of its determination and order

herein as if such witnesses had so testified and in 477 lieu of such testimony.

The statements set forth below are made solely for the purpose of this proceeding and for no other action, case or proceeding.

For the purpose of this stipulation, both The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc. are referred to as "Goodyear."

Company Organization—Sales of TBA
(As of April 22, 1957).

1. E. J. Thomas, President, is the Chief Executive Officer of Goodyear. Under the Chief Executive Officer the Company is divided into three broad areas—Production, Finance, Sales—each under the general jurisdiction of an Executive Vice President.

2. Mr. R. S. Wilson, Executive Vice President—Sales, has general jurisdiction over sales including sales of TBA. Under Mr. Wilson, Mr. Victor Holt, Jr., Vice President, has direct supervision over the Tire Sales Division. (CX-80-R.)

3. O. E. Miles, Sales Manager, Tire Division, reports directly to Mr. Holt. (CX 80-R.)

4. Reporting to Mr. Miles are six Regional Managers (Eastern, Southern, Central, Midwest, Southwest and Western.) Under the six Regional Managers are forty-nine District Managers. (CX-80-S and CX-80-U.)

5. Also reporting directly to Mr. Holt is R. W. 478 Fitzgerald, General Merchandising Manager, who has supervision over the Petroleum Sales Department, located in Akron. C. A. Eaves, Jr., became Manager of the Petroleum Sales Department on November 1, 1956, when S. A. Gaylord, Manager since January 1, 1934, became Consultant. Mr. Gaylord retired on January 31, 1957. (CX 80-T.)

6. Mr. Fitzgerald also has jurisdiction over the Associated Merchandise Department of which C. L. Metzger is Manager. The Associated Merchandise Department includes the Battery Sales Department, J. C. Thomas, Manager, and the Car & Home Merchandise Department, A. E. Patterson, Jr., Manager. The two latter departments are charged with procurement and merchandising of, respectively, batteries and automotive accessories, sold by the Company at wholesale to dealers and at retail through its stores. (CX 80-T.)

7. Also reporting directly to Mr. Holt is L. W. Moore, General Manager, Retail Stores. Mr. Moore has over-all supervision of the approximately five hundred retail stores owned and operated by the Company and located throughout the country. These retail stores also sell at wholesale. Each store is supervised at the field level under the Manager of the District in which it is situated. (CX 80-R.)

8. Working under the various District Managers are approximately four hundred and eighty Goodyear salesmen, called "general line salesmen," who solicit and service Goodyear tire dealers. Compensation paid to the 479 general line salesmen is in the form of salary plus bonus based upon sales quotas reflecting the potential of their territory.

9. The tire dealers solicited and served by the Goodyear general line salesmen include over 12,000 independent franchised Goodyear tire dealers plus an unknown but very substantial number of dealers who sell Goodyear tires but who have no contracts with Goodyear. Most of the contract dealers handle batteries and accessories, but this is at their election. Full TBA is available to them but is not required. The contract dealers sell to anyone who will buy—motorists, other dealers, commercial accounts, industrial accounts, government accounts, etc. Many solicit petroleum service stations and some may solicit oil company distributors.

10. The general line salesmen do not ordinarily attempt to call regularly on the many thousands of petroleum service stations scattered throughout the country. Instead they concentrate most of their sales efforts on the TBA supplying dealers who in turn solicit and service their petroleum service station customers.

11. "TBA Supplying Dealer" is a term used to designate a franchised Goodyear tire dealer who, as a part of his normal business (which may and often does include retailing) serves as a wholesaler of Goodyear TBA to petroleum service stations. He buys his TBA from Goodyear on the same regular program as to price, discounts, terms, product availability, etc., as is extended to all other Goodyear tire dealers, including even some petroleum service stations which, because of the nature or volume of their TBA business, may elect to purchase directly from Goodyear, in which event they would be franchised directly as Goodyear tire dealers.

12. The TBA supplying dealer is also solicited and assisted, particularly with respect to the petroleum service stations which he supplies, by one or more Goodyear Petroleum Representatives. Of a total of thirty-eight Petroleum Representatives, four are currently assigned to work on the Atlantic TBA program. The function of the Petroleum Representative is to cooperate closely with all oil company sales personnel in training and assisting petroleum service stations in selling TBA, thus furnishing liaison at the field level between Goodyear and the petroleum company as well as between Goodyear and the petroleum service stations. Goodyear's Petroleum Representatives are compensated on a salary basis.

13. The names of the four Petroleum Representatives currently assigned to work on the Atlantic TBA program are as follows:

Albert H. Shafer—Division Petroleum Representative
John Fitzgerald—Philadelphia-New Jersey Region

Frederick J. Dowling—New England Region (Deceased 4/26/57, successor to be named.)

John P. Anthony, Jr.—New York Region.

481 Products—

14. The entire range of Goodyear passenger and truck tires is made available to Atlantic accounts under the sales Commission Plan.

Passenger tires are offered in all sizes, tube-type or tubeless, black or white sidewall, and in various types and thread designs. They are priced as follows:

Price Category	Brand
Premium line	—Double Eagle (10 different sizes) —Captive-Air (10 different sizes) —Blue Streak (6 different sizes) —Nylon custom Super-Cushion (13 different sizes)
First line	—Custom Super-Cushion (22 different sizes) (also sold for original equipment purposes)
Second line	—De Luxe Super-Cushion (8 different sizes) —Nylon De Luxe Super-Cushion (5 different sizes)
Third line	—Super-Cushion (3 different sizes)

Premium line tires are made with Nylon cord, first and second line tires with both nylon and rayon, and third line tires with rayon.

Truck tires are also available in all sizes, in many 482 different types and tread designs. The principal groupings, according to use, are highway, off-the-road and industrial. Truck tires represent 7 percent to 10 percent in dollar volume of all Goodyear tires sold under the Sales Commission Plan with Atlantic.

Goodyear's current prices for passenger and truck tires are shown in CX Nos. 229-237 inclusive.

15. In addition to tires and tubes, the products manufactured by Goodyear and sold under the Sales Commission Plan with Atlantic are:

Retread and repair materials

Fan Belts

Radiator hose

Goodyear's current prices for these products are shown in the following exhibits: CX 238, CX 239 (Retread and repair materials); CX Nos. 242-246 inclusive (Fan belts); CX 242-246 inclusive (Radiator Hose).

16. Products sold by Goodyear under the Atlantic Sales

Automotive batteries

Various automotive accessories.

17. Automotive batteries are manufactured for Goodyear for resale under its own brand, in approximately equal quantities, by Electric Auto-Lite Company, main office at Toledo, Ohio, and Gould-National Batteries,

Inc., main office at St. Paul, Minnesota. Batteries manufactured for Goodyear are both wet and dry charge and are of various different qualities, sizes and types. Current price lists for batteries are shown in CX Nos. 240-A-D, 240-E-H and 241.

18. The more important categories of automotive accessories purchased by Goodyear for resale under the manufacturer's brand to Atlantic service stations, under the Sales Commission Plan include:

Accessory	Brand	Mfrs. Address
Spark Plugs	AC	AC Spark Plug Div. General Motors Corp. 1300 North Dort Highway Flint 2, Michigan
Oil Filters	AC	-See above-

Accessory	Brand	Mfrs. Address
Oil Filters	Purolator	Purolator Products Inc. 970 New Brunswick Ave. Rahway, New Jersey
Cleaners, Polishes and Waxes	du Pont	E. I. Du Pont de Nemours & Co., Inc. Specialties Div. Wilmington 98, Delaware
Cleaners, Polishes and Waxes	Johnson	S. C. Johnson & Son, Inc. Racine, Wisconsin
484 Cleaners, Polishes and Waxes	Simoniz	Simoniz Company 2101 Indiana Ave. Chicago, Illinois
Cleaners, Polishes and Waxes	Mac's	Mac's Super Gloss Co. Inc. 6040 N. Figueroa St. Los Angeles 42, California
Radiator Chemicals	du Pont	—See above—
Radiator Chemicals	Warner	Warner-Patterson Co. 920 South Michigan Ave. Chicago 5, Illinois
Auto Lamps and bulbs	Westing- house	Lamp Division Westinghouse Electric Corp. MacArthur Avenue Bloomfield, New Jersey
Wiper blades	Anco	The Anderson Company Gary 40, Indiana

Current price lists covering the above accessories are shown in CX Nos. 242-246, inclusive.

19. The number of automotive batteries and automotive accessories which Goodyear sells to Atlantic accounts under the Sales Commission Plan is but a very small part of the total number of such items which Goodyear purchases and resells to all its customers.

Flow of Distribution—

485 20. The flow of tires and tubes from Goodyear factory to consumer, via the Sales Commission Plan with Atlantic, is generally:

- (a) Goodyear Factory
to
- (b) Goodyear District Warehouse
to
- (c) Wholesaler, i.e., "Supply point"
 - 1. Goodyear Tire Dealer
 - 2. Goodyear Service Store
 - 3. 100 percent Petroleum Jobberto
- (d) Petroleum Service Station
to
- (e) Consumer

The Goodyear tire and tube factories are located at Akron, Ohio; Gadsden, Alabama; Jackson, Michigan; Los Angeles, California; and Topeka, Kansas.

Goodyear District Warehouses are located in the following cities:

Albany, N. Y.	Buffalo, N. Y.
Atlanta, Ga.	Charlotte, N. C.
Baltimore, Md.	Chicago, Ill.
Birmingham, Ala.	Cincinnati, Ohio
Boston, Mass.	Cleveland, Ohio
486 Columbus, Ohio	New Orleans, La.
Dallas, Texas	Oklahoma City, Okla.

Denver, Colo.	Omaha, Nebr.
Des Moines, Iowa	Peoria, Ill.
Detroit, Mich.	Philadelphia, Pa.
El Paso, Texas	Phoenix, Ariz.
Fargo, N. D.	Pittsburgh, Pa.
Grand Rapids, Mich.	Portland, Ore.
Harrisburg, Pa.	Richmond, Va.
East Hartford, Conn.	St. Louis, Mo.
Houston, Texas	Sacramento, Calif.
Indianapolis, Ind.	Salt Lake City, Utah
Jacksonville, Fla.	San Antonio, Texas
Jersey City, N. J.	San Francisco, Calif.
North Kansas City, Mo.	Seattle, Wash.
Los Angeles, Calif.	Spokane, Wash.
Memphis, Tenn.	East Syracuse, N. Y.
Miami, Fla.	Wichita, Kansas
Milwaukee, Wis.	
Minneapolis, Minn.	

21. The flow of batteries from the manufacturer to consumer, via the Sales Commission Plan with Atlantic, is generally:

- (a) Battery Manufacturer's Factory
to
- 487 (b) Wholesaler, i.e., "Supply Point"
 - 1. Goodyear Tire Dealer
 - 2. Goodyear Service Store
 - 3. 100 percent Petroleum Jobber
 to
- (c) Petroleum Service Station
to
- (d) Consumer

Because of the weight factor, stocks are carried in Goodyear District Warehouses only for emergency or convenience purposes. Any customer, whether wholesaler or re-

tailer, may—and frequently Atlantic Service Stations do—order direct factory shipment; currently the minimum order for this purpose is ten batteries.

The battery manufacturers' factories are located as follows:

Electric Auto-Lite Company—

Toledo, Ohio—Main Office

Reading Battery Division

Reading, Penna.

Niagara Falls, New York

P. O. Box 336

3125 Highland Ave.

East Point, Ga.

P. O. Box 309

Lawrence Ave.

488 Owosso, Mich.

P. O. Box 97

951 South Aiken Rd.

Vincennes, Ind.

P. O. Box 591

Oklahoma City, Okla.

P. O. Box 1965

600 South West Third Street

Oakland, Calif.

P. O. Box 126

Elmhurst Sta.

Paramount, Calif. (L A)

7701 East Compton Blvd.

Gould National Batteries, Inc.—

Chicago Heights, Ill.

12th & McKinley Streets

Dallas, Texas

4935 Cass St.

Denver, Colo.

2315 15th St.

East Point, Georgia

117 East Taylor Ave.

Houston, Texas

P. O. Box #14475

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Leavenworth, Kansas

1901 South Fourth Street

La Puente, Calif. (L A)

14500 Nelson Ave.

Lynchburg, Va.

2800 Carroll Ave.

Marlboro, Mass.

303 Mechanic St.

Memphis, Tenn.

P. O. Box #3975 Lamar Station

North Bergen, N. J.

2101 85th Street

Ogden, Utah

160 West 28th Street

West Salem, Oregon

576 Patterson Ave.

St. Paul, Minn.

1025 No. Lexington Ave.

Zanesville, Ohio

1606 Moxahala Ave.

Main Office—St. Paul, Minn.

First National Bank Building

22. The flow of automotive accessories from the supplier to the consumer, via the Sales Commission Plan with Atlantic, is generally:

490 (a) Supplier

to

(b) Goodyear Car and Home Merchandise Warehouse
(9 in number)

to

(c) Wholesaler, i. e., "Supply Point"

1. Goodyear Tire Dealer
2. Goodyear Service Store
3. 100 percent Petroleum Jobber
to

(d) Petroleum Service Station
to

(e) Consumer

The suppliers of automotive accessories are located in various states. The nine Goodyear Car and Home Merchandise Warehouses are located in or near the following cities:

Boston, Mass.

Chicago, Ill.

Cleveland, Ohio

Dallas, Texas

Gadsden, Ala.

Kansas City, Mo.

Los Angeles, Calif.

Philadelphia, Pa.

Portland, Ore.

With the exception of Boston and Dallas, none of the above warehouses are located at the same address as any of the Goodyear District Warehouses listed in Par. 20 above.

23. In some instances an Atlantic service station may buy TBA direct as a franchised Goodyear dealer, in 491 which event there would be no intervening wholesaler.

On occasion such a service station may supply other service stations, thereby functioning as a wholesaler as well as retailer.

Supply Points—

24. The function of a supply point is to satisfactorily sell, service and supply TBA to its customers at wholesale competitive prices. This requires the carrying of balanced stocks of these items and the maintaining of adequate

facilities and equipment, often including one or more TBA Supply Trucks with driver salesmen.

25. Each Goodyear District Manager is responsible for distribution in his territory, and it is therefore part of his job and responsibility to find and provide supply points which will render the best service to those Atlantic accounts in his territory purchasing Goodyear TBA. Supply points buy and sell on the same terms as do all wholesalers of Goodyear's products and they receive no extra compensation for servicing Atlantic accounts under the Sales Commission Plan.

26. The number of Atlantic accounts served by a given supply point naturally varies according to local market factors. The average is approximately 16.

27. The majority of supply points serving Atlantic accounts are independent franchised Goodyear tire dealers--

TBA Supplying Dealers. Such dealers are entirely 492 independent businesses. They sell Goodyear TBA or competitive lines of TBA to whomever they please, whether petroleum or non-petroleum accounts and without reference to whether or not such customers are connected with any Sales Commission Plan. Some Atlantic service stations serve as supply points but Atlantic does not designate which ones are to serve as such.

28. In some local areas there is a lack of independent dealers with adequate facilities for satisfactorily functioning as a supply point, or there is a lack of such dealers desiring to assume the responsibilities involved in being a TBA Supplying Dealer. In such areas the Goodyear District Manager may select the nearest Goodyear Service Store to act as the authorized supply point.

29. In certain local areas where neither independent dealers nor Goodyear service Stores are available to serve Atlantic accounts, such accounts may be supplied directly from Goodyear Districts and/or warehouses.

30. Atlantic actively participates in the improvement of TBA supply service to Atlantic petroleum outlets. It calls the attention of Goodyear to any inadequacy or weakness in the supply point service and suggests ways in which better service can be rendered. Such suggestions may include the addition of new supply points, enlargement of inventory or improvement in delivery service.

Similarly, improvements may be initiated by Goodyear itself or by suggestions offered by the supply points or by the Atlantic dealers purchasing Goodyear TBA.

Mechanical Features and Forms—

31. Commissions are paid monthly by check from Goodyear's Accounting Department in Akron. Under the sales commission plan Atlantic receives a commission of 7½ percent on sales of Goodyear TBA to Atlantic's franchised distributors. No further commissions are paid with respect to any Goodyear TBA which Atlantic service stations may purchase from the Atlantic distributors. Some Atlantic service stations may buy a part of their Goodyear TBA from Atlantic franchised distributors and part from designated supply points. In such cases Atlantic receives the ten percent commission only on those purchases from the designated supply points. In order that the payments due Atlantic under the terms of the Agreement may be accurately computed upon the basis of reliable sales figures, certain forms are used.

32. Form G-1209 (CX 41-B) is the basic record which shows that sales by the Goodyear supply points to the designated Atlantic dealer are subject to the payment of a sales commission by Goodyear to Atlantic. Generally the form is, in the first instance, prepared by Atlantic and forwarded to the Goodyear District Manager. The Goodyear District Manager designates on the form the supply

points whose sales to the particular dealer will be
494 subject to the payment of a sales commission by Goodyear to Atlantic. The Goodyear approval of the account for the payment of sales commission is indicated by the District Manager's signature to the form. (In rare cases, less than one percent of the time, approval by Goodyear may be withheld for such reasons as temporary inability to establish a supply point.) Copies of the completed G-1209 Form are distributed to the Goodyear District Office, the Atlantic District Office, the Goodyear general line salesman working in the area and to the Goodyear Service Store, if any, which is approved as a supply point for the account. An independent dealer serving as a supply point for Atlantic accounts is furnished a list of such customers.

33. Goodyear's policy is to solicit all Atlantic service stations in the territory covered by the Sales Commission Plan with Atlantic. Occasionally Goodyear will sell to an Atlantic service station for which a G-1209 has not been issued. When this occurs, Goodyear will recommend to Atlantic that a G-1209 be issued.

34. Independent dealers serving Atlantic accounts as supply points under the Plan submit monthly to the Goodyear District Office reports of their Goodyear TBA sales to said accounts. These reports are generally made by the supplying-dealers on Form G-1201 (CX 43-B). Such reports are not made by Atlantic service stations which may act as supply points since commissions are paid
495 with respect to their purchases, not with respect to their sales.

35. In rare instances the independent supplying dealer does not maintain adequate bookkeeping facilities which would enable him to readily fill out and submit the G-1201 Forms. Also, occasionally, periodic checks by Goodyear of purchase volume against reported sales reveal that the

G-1201's submitted by a particular supplying dealer are inaccurate. In either of these cases, the use of the G-1201 will be discontinued and the sales of the dealer to his Atlantic accounts will be reported on Form G-1208 (CX 44-B). This Form is generally made out by the dealer and a Goodyear general line salesman working together from the dealer's invoices.

36. Goodyear Service Stores serving Atlantic accounts as supply points under the Plan submit monthly to the Goodyear District Office reports of their TBA sales to said accounts. These reports are made on Form G-1207 (CX 44-C).

37. In those instances where an Atlantic account is supplied on a direct franchise from a Goodyear District and/or warehouse, the District Office maintains a record of the TBA sales on Form B-91 (CX 44-D).

38. Form ~~G-1204~~ (CX 42-B) lists all of the Atlantic dealers covered by Form G-1209 and records all of the sales for each particular month with respect to which commissions are to be paid by Goodyear to Atlantic. 496 Names of the Atlantic dealers are entered on the Form by Atlantic and the Form is forwarded to Goodyear. Thereafter, Goodyear fills out the remainder of the Form from information obtained from Forms G-1201, G-1208, G-1207 and B-91 which has been collected by the District Office.

39. Copies of the completed G-1204's are submitted monthly by the Goodyear District Office to Atlantic and to Goodyear, Akron and are used for calculating the commissions due Atlantic.

40. One other Form has been received in evidence, Form B-80 (CX 45-B) which has no connection with the Sales Commission Plan. This Form is maintained by each Goodyear District Office and on it are accumulated all sales

including those reported on the above-mentioned Forms and those having nothing to do with the Sales Commission Plan. Names of customers are not written down on the B-80, this form merely being a master summary of all sales used for general accounting purposes.

Atlantic Dealers—

41. The great majority of Atlantic dealers designated on Form G-1209 are indirect Goodyear accounts. These are accounts which purchase Goodyear TBA from a direct Goodyear franchised dealer. A number of Atlantic dealers are themselves direct Goodyear dealers and purchase their Goodyear TBA directly from the Goodyear district.

497 Such indirect and direct dealers may sign Forms designated as Associate Dealer Agreements (CX 44-E) and Goodyear Service Station Agreements (CX 44-F and CX 44-G), respectively. Goodyear is a party to the direct franchise contract but not to the indirect franchise contract.

42. Goodyear generally learns from Atlantic that a new Atlantic service station has opened up or that a new operator has taken over an existing Atlantic station. Such a dealer is contacted by the Atlantic sales representative and by either a Goodyear general line salesman, a Goodyear Petroleum Representative or a representative of the Goodyear supply point. Each of these persons will endeavor to promote the sale of Goodyear TBA to the Atlantic dealer. If it appears that such a dealer is a potential customer for TBA, a G-1209 Form will be issued in the manner described above.

43. Atlantic accounts which are direct Goodyear dealers are called on by Goodyear general line salesmen at such intervals as will assure maximum sales results. These accounts generally carry a large inventory, and visits by Goodyear general line salesmen will be at one, two, four

or six week intervals depending upon the particular necessities.

44. Atlantic accounts which are indirect or Associate Dealers are visited by the salesmen of their supply points.

Such accounts normally carry a small inventory and 498 depend upon frequent solicitation and quick service.

Their supply point salesmen call on them bi-weekly or at least once a week. These indirect accounts are so numerous and their individual unit volume of purchases are so low that Goodyear considers it to be more economical and efficient to have them solicited by their nearby supply points than by its general line salesmen who are primarily concerned with direct accounts.

45. All Atlantic accounts, whether direct Goodyear dealers or Associate Dealers, are regularly solicited for TBA by Atlantic Salesmen who carry Goodyear TBA order blanks. While Atlantic does not take title to the Goodyear products, its salesmen take orders which they forward to the supply points.

46. A number of Atlantic accounts as to which a Form G-1209 has been issued do not in fact buy any Goodyear TBA products. Many Atlantic accounts buy competing TBA products. All such accounts, however, continue to be solicited by Goodyear, by Atlantic and by supply point salesmen.

47. Goodyear prepares an inventory guide (CX 247-B) which is made available to all petroleum service station customers including Atlantic stations. The guide is based on the actual experience of thousands of average and high-gallage service station outlets. The purpose of the guide is to recommend quantities and types of merchandise 499 to be carried so as to secure maximum sales with minimum dollar investment.

48. Goodyear and Atlantic have agreed upon the design of metal signs and window valances which are made

available by Goodyear to all Atlantic outlets on a no-charge basis. In certain cases Atlantic dealers may want special signs such as electrical signs. These are available on a rental basis.

49. Cooperative advertising is available to all Atlantic service stations, direct dealers and associate dealers, on the same basis it is offered to all other Goodyear dealers and associate dealers. The types of cooperative advertising currently available embrace newspaper, radio, television and telephone directory advertising.

Additional Facts About the Goodyear-Atlantic Relationship and the Sales Commission Plan—

50. Goodyear had never had any kind of marketing arrangement with Atlantic prior to the commencement of the Sales Commission Plan in the Newark area on June 12, 1950. Goodyear solicited TBA business from Atlantic service stations for many years prior to June 1950. However, Goodyear's staff was never able to regularly call on and adequately service all Atlantic stations in any given area.

51. The sales commission agreement entered into by Goodyear and Atlantic was the result of negotiations between the two companies following the receipt by Goodyear of Atlantic's letter of January 19, 1948 (CX 1-A). On April 6, 1948 Goodyear declined to make a proposal to Atlantic (CX 3-A), but under date of May 4, 1949 it notified Atlantic of its interest in discussing the subject of marketing TBA through petroleum service stations (CX 4-A-B). In May 1950 Atlantic notified Goodyear of its desire to test the Sales Commission Plan in the Newark area. Operation of the Newark test commenced on June 12, 1950. Subsequently, as of March 1, 1951, the plan was adopted by Atlantic for three of its marketing

regions—the New England Region, the New York Region, and the Philadelphia-New Jersey Region.

52. If there were no Sales Commission Plan with Atlantic, Goodyear and its supply points would have to increase very substantially the size of their sales forces and the extent of their sales promotion efforts in order to solicit and service the Atlantic accounts now buying Goodyear TBA in the manner and on the scale possible under the present plan.

Dated: June 24, 1957.

501

Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
63 Wall Street,
New York 5, New York,
*Attorneys for the Goodyear Tire &
Rubber Company and the Goodyear
Tire & Rubber Company, Inc.,
Respondents.*

Counsel Supporting the Complaint.

502 Mr. Kelaher: Your Honor, our next witness is scheduled for 2:00 o'clock, so I suggest that we adjourn until that time.

Hearing Examiner Kolb: He won't be here until 2:00?

Mr. Kelaher: He may be here at 1:30.

Hearing Examiner Kolb: Do you want to adjourn until 1:30 or do you want to adjourn until 2:00?

Mr. Kelaher: How about counsel for the respondents?

Mr. Correa: We are here, your Honor, far from home and our offices and our regular businesses, so that it doesn't matter to us.

Hearing Examiner Kolb: If he will be here at 1:30 I suggest we return at 1:30; however, if he won't be here then, why, that is something else.

Mr. Kelaher: We have every reason to believe he will be here at 1:30, your Honor.

Hearing Examiner Kolb: All right. The hearing will be adjourned until 1:30.

(Whereupon, at 11:35 o'clock a. m., the hearing in the above-entitled matter was recessed to reconvene at 1:30 o'clock p. m. this day.)

503

Afternoon Session.

(1:40 p. m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: I call Mr. Duboff.

MYER DUBOFF, was thereupon called as a witness on behalf of the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address for the record, please?

A. Myer Duboff, 45th and Lancaster Avenue, Philadelphia, Pa.

Q. And the name of the company?

A. Lancaster Auto Supply, 4500 Lancaster Avenue.

Q. What type business is the Lancaster Auto Supply Company in?

A. Well, we sell automotive parts, we sell supplies, machine shop work, anything in the automotive business. We sell oil filters, spark plugs, fan belts, radiator hoses, anything and everything in the business.

Q. Can you give us the trade names of the products you handle in the chemical line for example?

A. DuPont, Prestone.

504 Q. How about fan belts and hoses?

A. That is Raybestos.

Q. And batteries?

A. Exide, AC oil filters.

Q. That will do. What is the sales area of the company, Mr. Duboff?

A. Well, we are actually selling all over Philadelphia. We sell in the suburbs of Philadelphia, and the outside area.

Q. So to what class of customers do you sell?

A. Service stations, independent garages, industrial people, and well, contractors, we sell to stores, we try to cover every phase of the business.

Q. How many salesmen are employed there?

A. At the present time I believe there are about four.

Q. How are they compensated?

A. Salary plus commission.

Q. Is that the way you are compensated, too?

A. That's right, sir.

Q. Do you operate any trucks for delivery purposes?

A. We have two, three, we have I would say about five or six vehicles for service.

Q. Do you use those trucks for delivery service?

A. We use them for pick-up and delivery, yes, sir.

Q. How long have you been with the company, Mr. Duboff?

A. I would say roughly about 10 years.

505 Q. And in what capacity?

A. As a salesman, outside salesman.

Q. And what is your sales territory for the company?

A. Well, I can go anywhere, actually. If a fellow—in other words, if I know somebody in another section of

town, I can go up there and do business. I am not limited; I have the entire city at my disposition, anywhere I want to travel.

Q. What type customer do you solicit?

A. Everything and anybody in the business, the same thing as I said before.

Q. That includes service stations?

A. Service stations, garages, stores.

Q. In your sales territory, are there any Atlantic stations?

A. Yes, there are.

Q. Do you solicit their business?

A. Yes, I try to solicit their business.

Q. Do you sell to any of them?

A. I sell to a few independents. I can't sell to the company-owned stations, impossible.

Q. Will you define an independent?

A. Independent is a man that owns his own building, and is just selling Atlantic products, more or less their gas and oil.

Q. Do you have some idea of the number of Atlantic stations in your territory?

A. I would say anywhere between 30 and 35 that 506 I actually could maybe do business with.

Q. And do you solicit those, all of those?

A. No, I gave them up for a bad job to tell the truth, because you keep on going in there and they say they can't buy from you; not all of them, some of them.

Q. Do you sell to any of them?

A. Independents, we do, yes.

Q. What other type are there?

A. I beg your pardon?

Q. What other type stations?

A. Well, there is company-owned stations.

Q. I see. Now as to the independents, what do you sell to those stations, Atlantic stations?

A. To the independents we sell the entire line, to tell the truth. We sell wherever we can, fan belts, hoses, spark plugs, filters. We sell a complete line to them.

Q. And as to the other type Atlantic stations, do you sell to any of those on a regular basis?

A. I don't quite understand the question, sir.

Q. You have named independent Atlantic stations and company-owned Atlantic stations—

A. (Interposing.) I see what you mean.

Q. Now to company-owned stations, do you sell to any of those?

A. No, I can't sell them.

Q. Do you sell them anything outside of the TBA line?

507 A. I was at one time selling mufflers and some other things that didn't pertain to any of the products of the company.

Q. When did you sell to them?

A. Well, I would say within a period—to some of them. Now I don't remember exactly, about a year ago or something like that.

Q. You—at any time were you able to sell to any of the—in years past—able to sell to any of the Atlantic stations?

A. How many years are you speaking about, sir?

Q. Well, when was the last time you were able to sell to them?

A. Well, it is getting tougher and tougher to sell them, to tell the truth.

Well, I would say within the last couple of years it is getting worse.

Q. Do you continue to solicit their business?

A. I try to, but it is like barking up a tree. I mean,

you can't do anything with these fellows; they must buy from the company and that is the answers I get.

Mr. Thompson: I move that last answer be stricken, sir.

Hearing Examiner Kolb: Read the answer, please.

(Answer read.)

Hearing Examiner Kolb: Motion to strike denied.

506 By Mr. Dias:

Q. Can you state specifically the name of any Atlantic dealer that told you that?

A. I. Mann, at Brookhaven and Haverford Road.

Q. And can you place a time on that, please?

A. Well, that is every time.

Q. When was the last time you called on him?

A. A couple of months ago, I would say four or five or six weeks ago.

Q. Are there any others who made similar statements to you?

A. Well, they all beat around the bush. They just don't come out directly; they tell you they must still buy from their supplier.

Mr. Correa: Could we have these conversations fixed, the date, with whom, and exactly what was said, instead of these conclusionary answers?

Hearing Examiner Kolb: Try to fix the time of your conversations.

By Mr. Dias:

Q. Can you fix a time that these conversations took place, and the name of the party with whom you had the conversations?

A. Well, I. Mann has been right along, five or six weeks ago, and I will state that and that is true.

Q. Then I asked you if there was another one. Was there another instance of that?

509 A. Well, I can't actually at this time give you a specific date and time and specific persons because lots of time some of these fellows have given up their stations instead of going on with what they are doing.

Q. You say there are about 35 Atlantic stations in your sales territory?

A. I would say at least that, yes, sir.

Q. Have you noticed the type TBA that is carried in those stations?

A. Yes, sir.

Q. What brand is primarily advertised?

A. Goodyear products right down the line. Goodyear, AC spark plugs, AC filter, also their batteries, radiator hoses and fan belts.

Q. Do you know who the Goodyear supplier is in your territory?

A. Well, the one that I run into mostly is Frank Hagan.

Q. Are there any others?

A. Well, there is Ernie Miller up on Westchester Pike; there is Ellwood Kieser downtown.

Q. Are your products competitive with the Goodyear products sold by these three supply points?

A. Yes, sir.

Mr. Correa: I object to that, if your Honor please.

Hearing Examiner Kolb: Did you say the products,
510 are they competitive?

Mr. Dias: Yes, sir.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: I submit, if your Honor please, it is impossible to tell what the witness means or what counsel means for that matter by "competitive".

Hearing Examiner Kolb: I think we all understand it.

Mr. Correa: I beg to differ with your Honor. I don't understand what it means, and I submit it has no such

well recognized meaning to make this kind of evidence admissible in this proceeding.

Hearing Examiner Kolb: I overruled the objection.

Mr. Correa: Exception.

Hearing Examiner Kolb: Read the question to the witness.

(The reporter read the question and answer as follows: "Question: Are your products competitive with the Good-year products sold by these three supply points? Answer: Yes, sir.")

Mr. Correa: May I supplement my objection by adding that the witness has not been qualified as able to testify to this matter and therefore there is no proper foundation laid.

Mr. Dias: This man has been a salesman for 10 years in the automotive supply business. I think case law 511 will sustain the position on the question to the effect that a man that has been in the business the length of time he has is certainly qualified to testify that, whether or not he is in competition with any given product.

Mr. Correa: If competition means, for example, quality, the witness, I submit, is not qualified. We have no showing in this record as to whether he is sufficiently expert to be able to deal with the relative merits of one battery and another battery, or one tire and another tire, let's say.

Hearing Examiner Kolb: I ruled on the objection. Proceed.

By Mr. Dias:

Q. If I have asked you this, you can stop me. Did I get the brand names of the products that you sell, batteries—

A. (Interposing.) Yes, you did.

Mr. Dias: That is all.

Hearing Examiner Kolb: Cross examination.

Cross-Examination by Mr. Thompson.

Q. You said there were four salesmen for the company, Mr. Duboff?

A. Yes, sir.

Q. Were all four of them selling all over the city of Philadelphia and the suburbs?

512 A. We do, sir.

Q. Do you all sell the full line of all of the merchandise, wholesaled by Lancaster Auto Supply Company?

A. I don't get that, sir.

Mr. Thompson: Would you read the question, please?
(Question read.)

The Witness: Wholesale and retail.

By Mr. Thompson:

Q. I guess I didn't make my question clear. Are all four of you engaged in soliciting whatever accounts you want all over the city?

A. Yes, and the suburbs.

Q. And all four of you try to sell all of the different items of merchandise which is handled by Lancaster Auto Supply, is that correct?

A. That is true.

Q. So that all four of you might be calling on the same garage?

A. Never on the same one. We all know each other's customers; sometimes I can't sell a man and the other fellow can.

Q. Your company does a lot of repair work, does it not?

A. I wouldn't say to the extent we used to, years ago. We don't repair cars. We do shop work.

Q. Does the phrase "hard parts", is that familiar to you?

A. Yes, sir.

513 Q. That is your company's specialty, is it not?

A. No, I wouldn't say that, sir. We only have two men in the shop. We used to have six and eight and ten people in the shop at one time.

Q. No, but your company sells hard parts to various retailers throughout the city, do you not?

A. Yes, sir.

Q. And that is your specialty, is it not?

A. No, it is not our specialty, no, sir.

Q. About 75 percent of your sales?

A. No, sir.

Q. What percentage, would you say?

A. I would say 20 percent, as a top. We only keep this as a background more or less to get the other business, but I am not in a position to tell you exact percentages. I only say 20 percent out of the sky, I don't know. I know it is very little.

Q. How about service station equipment, do you sell that?

A. Yes, we sell that.

Q. And that is a fairly large part of your business, is it not?

A. No, it is not, no, sir.

Q. What is the largest part of your business, accessories?

A. No, everything but hard parts, sir. Well, if you say accessories, your spark plugs, oil filters, fan belts, 514 hoses, that is repeat business, it is quite a bit, a lot of business.

Q. And that is your principal business?

A. Batteries, antifreeze. Yes, sir.

Q. And service stations are your principal customers?

A. Not necessarily. I wouldn't say principal. We do have other customers besides service stations.

Q. The company made great progress in their annual volume of sales in recent years, hasn't it?

A. I don't know. I am not in a position to answer that.

Q. How about your end of the business? Hasn't that been increasing substantially, your own sales?

A. My business is all right, yes, sir.

Q. About 70 percent of your sales are cash, are they not?

A. No, they are not.

Q. What percentage would you say?

A. I don't know, again, I do not know the percentages of cash against charge. I am only a salesman, sir.

Q. How about from your experience as a salesman, aren't most of your sales for cash?

A. No, sir.

Q. You handle credit accounts?

A. I don't handle them personally, no. We have a credit department that takes care of that.

Q. But you handle accounts to whom your company extends credit?

515 A. Yes, if the man is open, I certainly give him credit to leave him sign for it until the following month.

Q. What percentage of the service station accounts that you sell to are on credit and what percentage are on cash, approximately?

A. Of my own experience, sir?

Q. Yes, your own accounts.

A. Oh, my accounts. Well, I would say about 70 percent, at least, 70 percent that are charge accounts.

Q. And the others are for cash?

A. Yes, somewheres around that.

Q. How do you deliver when it is for cash? Do you drive a truck?

A. Oh, no, sir.

Q. What do you do, take an order—

A. (Interposing.) Either I phone it in or I write it up the next day and pass it on to the boys to pull the orders and write it up and get it out.

Q. And the deliveries are made COD?

A. If it is a cash customer, yes, sir.

Q. You mentioned one person, Mr. I. Mann, of Haverford and Brookhaven Road.

A. That is right.

Q. As having said something to you about inability to buy from you. I was not clear as to what he said.

516 A. Do you want me to state what he said to me? He said to me "I can't buy from you".

Q. Had he been buying from you?

A. He was buying odds and ends and every time I came in to sell him, he would have to hide things, you would think it was the Gestapo or something. I would go in to see him and talk to him and he would say "Mike, I can't buy from you," and I said, "Why not," and he says "They know what I am doing," and I didn't think that was right.

Q. Isn't he presently buying Exide batteries from you?

A. He is not. He hasn't in years.

Q. Brake linings?

A. He might have bought some brake linings in between. Not to amount to anything, as far as I know.

Q. Jacks?

A. Jacks, no, I don't think he bought a jack. Maybe five years ago he might have.

Q. Wheel puller?

A. No, I don't think anything along that line. He did buy an impact tool from me, sir.

Q. What is an impact tool?

A. That speeds up putting the tires on and taking heads off of engines.

Q. Does your company sell assorted tools for service stations?

A. Yes, we sell assorted tools.

517 Q. Do you supply Mr. Mann with those?

A. I wouldn't say so, necessarily. He might have picked up odds and end tools he needed to fill in or something like that.

Q. Well now, let's take these hard parts. I think you said you found it impossible to sell anything to Atlantic stations?

A. Yes, sir.

Q. And that applies to hard parts, too?

A. Well, I wouldn't say—it would be the same if I walked in and see the man and asked him, I would say, ask if I can help him, anything you need along these lines, suggest these things, and hard parts is—the only time you get a hard part, you wouldn't sell a hard part directly in selling. The man would pick the telephone up and he called for delivery on a hard part.

Q. That same comment applies, would it, to service station equipment?

A. Depending on the service station equipment, sir.

Q. Do you find it impossible to sell service station equipment to Atlantic owned stations?

A. I wouldn't say that. Most of them were getting them from Alemite. They were getting their equipment from Alemite and I might be able to sell small parts, small grease guns or repair fittings, or ends, or maybe an assortment of grease fittings.

518 Q. Do you try to sell service station equipment and hard parts to the Atlantic-owned stations?

A. I wish I could, sir.

Q. Do you try?

A. I have been on the street and I just bat my head against the wall.

Q. They just won't buy anything from you?

A. They give you the same stock answer, what I said before. The same answer is what I get.

Q. And that is so regardless of what you try to sell them?

A. No, I wouldn't say that. If they want a hard part, they might call me. I don't know everything that is going on. I am in the street. They may call in, I don't know, and it goes through the works.

Q. Mr. I. Mann is the only one that you can now recall who told you that he couldn't buy from you because they wouldn't let him or something like that?

A. There are other fellows told me that.

Q. Who?

A. Who were they? Well, there was D'Ascenzo Service Station there.

Q. Where is he located?

A. He is at 49th and Lancaster, I think.

Q. And he is what you call an independent?

A. Yes, sir.

519 Q. On what side?

A. Well—

Q. He owns his own station?

A. Yes, sir.

Q. What did he say to you?

A. Well, he said they were putting the pressure on and he is right now ready to give it up, Atlantic, entirely, just on account of the pressures exerted on him, that is what he told me.

Q. Anybody else you can think of?

A. I beg your pardon?

Q. Any other names?

A. Quite a number of fellows are out of business today. I mean, I have been travelling the same territory for years

and a lot of these fellows are out of business today. I can't recall the names.

Q. Have you now mentioned all the names that you can recall?

A. No, I wouldn't say that. Maybe another date I might be able to get them down. Charles Robinson was another one. He is out of business.

Q. Where was he?

A. 63rd and Ludlow.

Q. What was he?

A. He was a company-owned station.

Q. Are there any other names that you can recall?

520 A. I couldn't recall at the present time, sir.

Q. Do you know what the brush-off technique is?

A. Well, yes.

Q. Did you ever have it applied to you?

A. Well, on the street you are liable to get anything, sir.

Q. Liable to get it from almost anyone, aren't you?

A. That is right.

Mr. Thompson: That is all.

By Mr. Correa:

Q. Is this Mr. I. Mann of whom you spoke, does he sell tires?

A. Tires?

Q. Yes.

A. I guess he does. We don't sell tires, sir.

Q. Have you been in his shop, place of business?

A. Yes.

Q. Have you seen tires there for sale?

A. Yes, sir, I saw them.

Q. What kind?

A. I don't know anything about tires, I don't sell them. I don't know anything about it. I don't sell tires, I wasn't concerned with that.

Q. Isn't it a fact that he sells Lee tires?

A. I don't know.

Q. You can't recall it, sir?

A. No, sir, I don't have anything to do with tires.

521 Mr. Correa: I have no further questions.

Redirect Examination by Mr. Dias.

Q. You were asked whether or not the company's business had increased. Has your own business increased in your sales territory?

A. Well, my business is increased on account of the higher dollar now, everything costing more, more or less.

Q. How much of that increase was due to larger or greater sales or more numerous sales to Atlantic stations?

A. Well, I took an independent man at 66th and Haverford Avenue and that man has been giving me over a thousand dollars a month from an independent gas station.

Q. What brand?

A. Atlantic gas station, and he has since changed over this last week.

Q. What was his name?

A. James Amen.

Q. What type merchandise were you selling him?

A. The complete line, Exide batteries, AC filters, AC spark plugs. I changed over from Goodyear belts to Raybestos last week so I will be selling Rabestos instead of Goodyear fan belts.

Q. Did you give us his address?

A. 66th and Haverford Avenue.

522 Q. Can you recall any other Atlantic business that has resulted in your particular increase in business, in your territory?

A. Particular—what?

Q. In TBA, that is.

A. I didn't quite get the question, sir.

Q. You have testified that your business in your territory has increased?

A. It has.

Q. And you have stated that your business with James Amen for example, runs about a thousand dollars a month?

A. That is right.

Q. Now my question is: Are there other Atlantic stations that buy similar lines from you?

A. No, I can't do any business with them, sir.

Q. Then is the overall increase in business in your territory due to increase in Atlantic sales, sales to Atlantic stations?

A. Is the overall business—

Q. Is your overall increase in sales in your territory a result of increased sales to Atlantic stations?

A. I still—you better word that again.

Q. Let me pass that up. On cash sales, do you get credit for cash sales that may be made?

A. Not so much, no. I don't get too much credit, 523 unless I know who the account is. There is a special folder on cash sales, I have a girl taking care of it. It is a long story. I get it and yet I don't. I will put it that way.

Q. You mentioned that Mr. Robinson said something about pressure. What did he tell you?

A. He told me everything under the sun. That man told me everything. This has been going on—the gas station has been taken over a number of times, a couple of fellows since, and all the time he had it, it was tough. It was tough grinding there. He said he had to buy, he had to buy from the dealers, is what he told me.

Q. Can you tell us when that was?

A. That is going back, I would say, about six years ago, I guess.

Q. Now let me return to the increase in business in your

territory. Mr. Thompson asked you if your business had increased, do you recall that, in your territory?

A. Has it increased?

Q. It has increased?

A. It has, yes, sir.

Q. It has, you say?

A. Yes, sir.

Q. Can you recall roughly what it was, what your monthly business was, for example?

A. Well, I know I am keeping going up the ladder, 524 I will put it that way.

Q. Now in going up the ladder, is it due to increased sales to more Atlantic stations?

A. No, no, sir. In other words, if I had more Atlantic stations, I would have more volume. I would love to do business with them.

Q. Now you also mentioned that D'Ascenzo complained of pressure. Can you recall what type of pressure, did he mention that?

A. No, he said they are bothering the life out of me, he is fed up to here and ready to throw in the sponge.

Q. Who did he refer to as they?

A. Atlantic Refining.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Any further questions?

Recross Examination by Mr. Correa.

Q. Were you interviewed by representatives of Federal Trade Commission prior to your testimony here?

A. Was I—what?

Q. Were you interviewed by representatives of Federal Trade Commission?

A. A man came into the store, yes.

Q. When?

A. That has been a long while ago.

525 Q. Give me an estimate.

A. An honest estimate, now wait a minute. I would say about six months ago.

Q. Was that the last time?

A. That is the last time I saw the man, that is right.

Q. Was that the only time?

A. That's right.

Q. Did you give any statement in writing concerning the matters about which you have testified?

A. I didn't give any statement in writing, no, sir.

Q. Have you written him or anybody else connected with the Federal Trade Commission any letters?

A. No, sir.

Q. Nothing at all in writing?

A. No, sir.

Mr. Correa: I have nothing further.

By Mr. Thompson:

Q. Mr. Duboff, were you advised by the representative of the Federal Trade Commission of the nature of this proceedings when he called upon you?

A. I wasn't advised about it, the nature of it. He just asked me questions about what was going on and I told him I couldn't sell Atlantic gas stations.

Q. Did he tell you this proceeding was pending?

A. What, sir?

526 Q. Did he tell you that this proceeding had been started?

A. No, sir, no, sir, I never knew anything at all about it, that it was pending.

Mr. Thompson: That is all.

By Mr. Correa:

Q. Did he tell you you might be called as a witness in a proceeding?

A. Yes, he told me I might be called as a witness, yes.

Q. But he didn't tell you what the proceeding was in respect to which you might be called as a witness?

A. No, he just asked me about different questions, what is going on in the field, and I just told him, so I said I would be glad to tell the truth, which I am telling, is the truth. I said I would be glad to sit up there and tell the truth what is going on.

Q. Did you just offer to be a witness without knowing of any proceeding or did you know there was a proceeding?

A. He did not tell me there was a proceeding of any kind.

Q. But he did tell you you might be needed as a witness?

A. I don't recall.

Q. There was some discussion, I gather, from what you told us about your testifying as a witness.

A. No, I don't recall him saying I would be a witness. He asked me about what was going on and I told him what was going on in the field.

527 Q. Didn't you say a moment ago he told you you might be needed as a witness?

Mr. Dias: Your Honor, I object to this line of questioning. I don't see it is relevant.

Mr. Correa: He said that a moment ago, if your Honor please. I think his credibility is in issue.

Mr. Dias: I don't see how it affects this proceeding one way or another.

Mr. Correa: If he says one thing five minutes ago and another thing now, that affects his credibility. Maybe that doesn't affect this proceeding in your idea, but it does in mine.

Hearing Examiner Kolb: Objection overruled. Read the question, please.

(The reporter read the question as follows: "Question: Didn't you say a moment ago he told you you might be needed as a witness?")

The Witness: If I said that, I made a mistake, because I don't recall him ever saying I might be a witness against Atlantic Refining. I do not recall that.

By Mr. Correa:

Q. But your present recollection, as of this moment, is that there was no discussion between you and this individual about your testifying as a witness?

A. There was no discussion, no, sir.

528 Q. That is your best present recollection?

A. That is right, sir.

Mr. Correa: That is all.

By Mr. Thompson:

Q. When did you learn you were going to be a witness?

A. When I got the subpoena from them.

Q. When the Federal Trade Commission representative called upon you, did you tell him about your conversation with Mr. I. Mann?

A. I told him about that, yes, sir.

Q. Did you tell him to the same effect, that you have testified here, about what Mr. Mann said?

A. Well, I might not be wording it word for word, but more or less it would be somewhat similar.

Q. Well, I am curious to know how you could have done that if it is true, as you testified, that the Federal Trade Commission representative came to see you six months ago, and you had this conversation with Mr. Mann five or six weeks ago?

A. You asked me if the case was pending, and I said, I don't know about a case pending.

Mr. Thompson: Read the question, please, and you listen carefully.

(Question read.)

A. Well, the Federal Trade Commission man came
529 into our place, it wasn't against Atlantic Refining,

sir. And any question that you are asking me, might I have them mixed up with another case entirely.

By Mr. Thompson:

Q. Did he come back and see you again?

A. I don't recall.

Q. Don't you recall whether he came back to see you again?

A. He didn't come back to see me the second time.

Q. That is what I mean.

A. No, no, I didn't see him the second time.

Q. You haven't yet explained how you could have told a man six months ago something that happened five or six weeks ago.

A. That happened before then. I am bringing that same answer back that happened years ago.

Mr. Thompson: That is all.

Mr. Correa: One further question.

By Mr. Correa:

Q. Did this Federal Trade Commission representative that you saw make notes of what you told him?

A. Yes, he was writing something down, yes, I think he might have. I don't know. I didn't see what he was writing down.

Q. But he was making notes?

A. He was writing something down, yes, sir.

Mr. Correa: That is all.

530 Mr. Dias: Nothing further.

Hearing Examiner Kolb: That is all, Mr. Duboff.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

531 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Matthews to the stand, please.

JAMES MATTHEWS was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. James Matthews, 208 Woodcrest Road, Wallingford Summit, R.D. 20, Media, Pennsylvania.

Q. Are you here in response to a subpoena?

A. Yes, sir.

Mr. Kelaher: Would you please hand it to the Examiner.

The Witness: (Handing.)

By Mr. Kelaher:

Q. Mr. Matthews, were you at one time an Atlantic leasee dealer?

A. Yes, sir.

Q. During what period and at what locations?

A. December 10, 1947 to August 15, 1949 in Darby.

Q. Would you give the addresses as you go along?

A. That was McDade Boulevard.

532 Q. Do you have any further identification on that location?

A. That is all. Just McDade Boulevard, Darby.

Q. Then did you have a station after that?

A. August 15, 1949 until June 1, 1954, Church Lane and Bailey Road in Yeadon.

Q. And after that did you operate an Atlantic station?

A. From June 1, 1954 to May 7, 1957, Baltimore Pike and Providence Road in Media.

Q. So you operated as an Atlantic leasee dealer from December 10, 1947 until last month, is that correct?

A. Correct.

Q. Mr. Matthews, when you entered your station December 10, 1947, what TBA did you begin to carry?

A. Exide batteries, Lee tires, Fram oil filters, Auto-Lite spark-plugs, Thermoid fan belts.

Q. And who was your principal supplier of TBA products?

A. Ed Parris, in Sharon Hill at that time.

Q. Do you recall attending a meeting of Atlantic dealers in or about March 1951?

A. I do.

Q. Do you recall where that meeting was held?

A. Kasfik's in Upper Darby; I believe, if I am not mistaken.

Q. And what was the purpose of the meeting?

Mr. Correa: I object to that, if your Honor please.

533 Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Would you please state who was present at the meeting?

A. Who what?

Q. Who were present at the meeting?

A. In regards to who, the company or—

Q. If there were company representatives there, just state whether—were there Atlantic dealers present?

A. Yes, sir.

Q. Were there representatives of the Atlantic Refining Company present?

A. Yes, sir.

Q. Was there a representative of Goodyear present?

A. I can't be sure.

Q. What transpired at the meeting?

A. We were told that they were going to make a change or switch in their TBA.

Q. By "they," who are you referring to?

A. The company, in regards to the stations. In other

words, they were going to take on—in others words, sponsor new products.

Q. What was the new product?

A. Goodyear tires and batteries and Goodyear accessories.

Q. And by "they," are you referring to Atlantic Refining Company?

534 A. Yes.

Q. At that time were you advised that you could purchase whatever brand of TBA you desired?

A. Yes, sir.

Q. And which brand of TBA did you desire to purchase, which brand of tires, rather?

A. Lee.

Q. Now in or about that time, did you have—or prior to that meeting, rather, did you have what is known as service station identification, did you have signs in your service station?

A. Yes, we had decals in the windows, and signs outside also.

Q. Did you have a Lee sign outside?

A. Yes, in Darby I had a neon sign.

Q. Was that a large sign?

A. (Nodding affirmatively.) I am not positive whether it was a neon sign, but it was a lighted sign.

Q. How long had that been in your station?

A. It was in Darby when I took the station over in Darby.

Q. Now during the period in or about March 1951 you stated you were at the Yeadon station, is that correct?

A. That is correct.

Q. Did you have advertising of any type on your Yeadon station prior to March 1951, and what type of advertising did you have there, TBA advertising?

535 A. We had decals in the windows at the top.

Q. What brands were advertised?

A. Exide and Lee.

Q. Now, after this meeting in or about March 1951, did you continue to have Lee and Exide signs in your station?

A. (Nodding negatively.) They were taken down and others were put up.

Q. Would you please explain that in a little detail?

A. Well, I wasn't there when it occurred. They came in when I wasn't there and took down the signs and put up these other decals.

Q. By "they," whom do you mean?

Mr. Thompson: He said he wasn't there.

The Witness: I wasn't there, but I was told it was a representative from Goodyear and an Atlantic man was with him.

By Mr. Kelaher:

Q. Did you ask that the Lee and Exide signs be taken down?

A. I did not.

Q. Did you do anything about the Goodyear signs that were put up?

A. I took them down.

Q. What happened after that?

A. They came back out and put the Goodyear signs up again.

Q. Did they remove the Lee and Exide signs?

536 A. I had no more Lee and Exide signs to put up. They removed them the first time. The next time they came back and put them up after I took them down.

Q. How long after you removed them did they return and put the Goodyear signs up?

A. A week or so, as soon as they found out they were down.

Q. Now during the period prior to March 1951, you

stated that you sold Lee tires. Had you built up a fairly good volume in Lee tires?

A. Very good.

Q. And were you satisfied with Lee tires, price-wise?

A. Yes, sir.

Q. And were you satisfied with Lee tires as to the guarantee offered?

A. (Nodding affirmatively.)

Q. What type of guarantee was on the tires?

A. They had an unconditional guarantee; they also guaranteed against road hazard, over and above material and workmanship.

Q. And by road hazard, would you explain that a bit, what is meant by that guarantee?

A. Well, if you hit a curb and break it or hit a hole in the road and break it, it was still adjustable, based on the mileage it had travelled.

Q. And did Goodyear have a similar road hazard guarantee?

A. No.

537 Q. Did you desire—did you continue to sell Lee tires?

A. For some time after that, yes.

Q. How long after that did you continue to sell Lee tires?

A. Until, I would guess, very early in 1953.

Q. What happened at that time?

A. The company changed salesmen.

Q. By "company," you are referring to Atlantic?

A. Yes, sir.

Q. Who was the new salesman?

A. Bill Way.

Q. Will you please explain what relationship that has to do with your sale of Lee tires?

A. Well, prior to that time, I was bothered very little

with the salesmen. I very rarely saw him, and I don't think he knew what I was doing and if he did, he didn't care because he was leaving the company.

Q. In early 1953 you stated Mr. Way became the Atlantic salesman. Now would you please state what connection that has with your Lee tire sales?

A. He came out—I think his first trip was around—or he was brought around by the former salesman and introduced and nothing was said and the next time he came in a couple of days later, nothing was said. And two days later, he came in with his supervisor, Mr. Arnholt, and at that time everything broke loose then.

538 Q. By "everything broke loose," would you explain what you mean?

A. They told me what to do or else.

Q. What did they tell you?

A. They told me to get rid of Lee tires and to let's get with the company.

Q. "Let's get with the company"?

A. (Nodding affirmatively.)

Q. And did they make any comments with respect to accessories?

Mr. Thompson: Who is "they" at this point?

Mr. Kelaher: I am referring to Mr. Way and Mr. Arnholt.

The Witness: Yes, in regard to batteries they did because I had Auto-Lite batteries at that time.

By Mr. Kelaher:

Q. What comment did they make with respect to the Auto-Lite batteries?

A. They told me I had to handle Goodyear.

Q. Did you want to continue to handle Lee tires?

A. I did.

Q. And did you continue to handle Lee tires?

A. No.

Q. Why didn't you?

A. I didn't want my lease cancelled. I wanted my lease renewed when it terminated.

539 Q. Were you at any time asked by Atlantic representatives to sign a mutual cancellation of the lease?

A. I was.

Q. Would you please state when that was?

A. That was about two weeks after Mr. Arnholt and Mr. Way were there.

Q. And you fix that time early in 1953?

A. Correct.

Q. I would like for you to state just what happened then—with respect to the mutual cancellation of the lease document?

A. He came out and told me he had a cancellation for me to sign—

Q. (Interposing.) Who is "he"?

A. Mr. Way. I told him I wouldn't sign it. He told me I had to sign it and I said I didn't have to sign it. So we argued for three hours, and I didn't sign it.

Q. Was there any mention made of TBA during that conversation?

A. Sure, that is the reason he brought it out.

Q. What did Mr. Way say with respect to TBA?

A. He said I wasn't buying from the company as I was supposed to so they figured it was better for everyone concerned if I signed a mutual and they cancel my lease and I said I didn't want my lease cancelled and I said if I
540 cancelled mutual, I was making a liar out of myself.

Q. What did you say to Mr. Way as a result of the conversation?

A. I just told him I wouldn't sign it, but I told him I would be good and follow the line—actually, after we argued for two and a half to three hours, he told me then, he softened before I did, and he told me that he couldn't force

me to, and he couldn't do anything about putting me out until my lease expired in June, but that at that time my lease wouldn't be renewed. So I said all right, I will be a good boy and if I don't show a great increase in TBA and so forth by then, then you can cancel my lease and that way I felt I was going out because they wanted me to, but there was nothing I could do about it. I still wasn't making a liar out of myself by signing a mutual.

Q. After that conversation, did you increase your purchases of Goodyear TBA?

A. I did.

Q. And did you decrease your purchases of Lee tires and other non-sponsored brands of TBA?

A. Completely.

Q. So you went one hundred percent Goodyear at that time; is that correct?

A. I did.

541 By Mr. Kelaher:

Q. Did you want to change from Lee tires to Goodyear tires?

A. No.

Q. Why did you change from Lee tires to Goodyear?

A. Atlantic pressure.

Q. Did you purchase at any time Auto-Lite batteries. I believe you mentioned them, that you had them at one time.

A. (Nodding affirmatively.) I purchased Auto-Lite batteries in Yeadon, and I purchased them in Media.

Q. From whom did you purchase the Auto-Lite batteries?

A. Auto Gear and Parts, in Lansdowne.

Q. Who was the salesman?

A. Mr. Wilbur.

Q. Is he a friend of yours?

A. More or less, yes.

Q. And was any comment ever made by Atlantic representatives with respect to your purchase of the Auto-Lite batteries?

A. Yes.

Q. Are you saying yes?

A. Yes, sir.

Q. Would you please state the circumstances surrounding such comments and the approximate time thereof?

542 A. In the fall of 1954 I purchased 10 Auto-Lite batteries, and I was told at that time not to buy any more or they would find somebody with enough money to buy me out and that would be the end of my lease.

Q. Who told you that?

A. Mr. Hayes.

Q. Is Mr. Hayes present today?

A. Yes, sir.

Q. Would you identify him?

A. Yes, sir. (Indicating.)

Mr. Thompson: I didn't hear what Mr. Hayes said. May I have it repeated?

Hearing Examiner Kolb: Read the answer.

(Answer read.)

By Mr. Kelaher:

Q. Who was your Goodyear TBA supplier in Yeadon?

A. Mr. Parris, he was in Sharon Hill at that time.

Q. And who was your Goodyear TBA supplier when you moved to Media?

A. The same.

Q. Mr. Parris was your Goodyear supplier at all times?

A. Yes, sir.

Q. And prior to taking on the Goodyear TBA line, he

supplied you with Lee tires, Exide batteries, and other lines of accessories?

543 A. Yes, sir.

Q. After the mutual cancellation of lease incident, you stated you went one hundred percent Goodyear. At any time after that did you attempt or did you purchase at any time after that non-sponsored TBA?

A. In small quantities, occasionally.

Q. Was anything ever said about that by Atlantic personnel?

A. I was warned every time I did it and they found out about it.

Q. Would you please state the names of the Atlantic representatives that warned you?

A. Mr. Hayes and also Mr. Parris, of course, he wasn't an Atlantic representative, but he was selling.

Q. You mean the TBA supply man, Mr. Parris, also warned you?

A. Yes, sir. One particular incident, I had some MOA on the shelves and he thought it was foreign merchandise, Mr. Hayes, and he asked me where I got it and then he found out it came from Parris.

Q. MOA? What is that?

A. Motor oil additive, made by DuPont.

Q. And you referred to that, you said that was purchased from Mr. Parris?

A. (Nodding affirmatively.)

Q. And did Mr. Hayes think you had purchased it from Mr. Parris?

544 A. Not at the time. He found out later I had.

Q. And did you have a Mr. Hoffman call on you?

A. I did.

Q. Did he ever make any comments about the non-sponsored TBA in your station?

A. Yes.

Q. What did he say?

Mr. Correa: Could we have a time and place fixed?

Mr. Kelaher: Yes, we will do that.

The Witness: Yes. Shortly after Mr. Hoffman came into the territory, which was January 1, 1957, he and I had a discussion about DuPont's antifreeze, because the company always handled Prestone.

Q. What did he say?

A. He said—

Q. By "he" I mean Mr. Hoffman.

A. He asked me what I was doing with DuPont's anti-freeze and I told him that you had to have a certain amount of it for those customers that demanded it, but I only purchased it a case at a time, trying to make things as easy as possible.

Q. And do you recall any other incidents with Mr. Hoffman similar to the one you just mentioned?

A. No. But I recall one incident where he came in the office and I had a top coat and a jacket and I was on the way to the cleaners, and he threw them on the floor 545 and I only had laid them down long enough to talk to him because I was driving to the cleaners, on the way to the cleaners, and I saw him in the station and stopped in and carried them in with me. He took them and threw them on the floor.

Q. This is Mr. Hoffman you are referring to?

A. That is right.

Q. Was he doing that as a gag?

A. It might have been a gag to him, but it wasn't a gag to me. He told me to get them out of the front office.

546 Q. Did you receive advertising material from Good-year?

A. I did, not because I ordered it, but because they sent it and billed me for it.

Q. In other words, they sent you advertising material without your request, is that correct?

A. Uh huh.

Q. Are you saying "yes"?

A. They did.

Q. Did Atlantic salesmen or Mr. Parris ever write up fire orders without your request?

A. The salesman did, he sent in oil filters one time without my request and there were so many complaints from other dealers that Mr. Parris called me a day later and after he had sent them and said he understood that was the situation and he wanted to know if I wanted to send them back.

Q. What type oil filters were they? What brand?

A. AC.

Q. Now, with respect to tire orders, did Atlantic salesmen write up tire orders for you?

A. Usually Mr. Parris did.

Q. And would you request certain purchases or how was this done?

A. Usually they'd come in and say "What sizes do you want?" It wasn't how many, they knew if you had a buck why they—and could afford to pay for them they were going to send them in.

547 Mr. Thompson: I move the answer be stricken.

Mr. Kelaher: I think it's perfectly proper, your Honor.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Kelaher:

Q. After the time in March or in 1953 when you discussed the mutual cancellation of lease document with Atlantic representatives, did you ever purchase non-sponsored TBA in large quantities?

A. No, sir.

Q. Why didn't you?

A. I knew better.

Q. When you stated you knew better, would you just explain that in a little detail.

A. Well, if I wanted to stay a dealer I knew I couldn't do it.

Q. You know you'd—

A. In other words, you couldn't do it and get away with it.

Q. After that period when you did purchase non-sponsored TBA I believe you testified the comments were made by Atlantic representatives about it, is that correct?

A. That's correct.

Q. Mr. Matthews, you were an Atlantic lessee dealer from December 10, 1947 until last month, a period of 548 approximately ten years?

A. Correct.

By Mr. Kelaher:

Q. Mr. Matthews, you stated that you left your station May 7, 1957. Would you state whether or why you left your station at that time?

A. Due to my health.

Q. And did you at that time have an inventory on hand?

A. I did, of about stock and equipment \$13,000.

Q. Did Atlantic repurchase any of the inventory?

A. They took most of the inventory and a small part of the equipment but equipment that I was told that I must buy when I went there they left me holding, which I'm still holding, approximately \$3,000 worth of today.

Q. Did you have any Fram oil filters in your inventory?

A. I did, I had about 36 and I still have them.

Q. Would Atlantic repurchase them?

A. No, sir.

549 Q. They were non-sponsored?

A. No, they were sponsored.

Q. They were sponsored when?

A. I bought them from the previous dealer when I went there as dealer merchandise.

Q. Prior to '51?

A. That was in '54 when I bought them, June 1st.

Q. You bought those from Mr. Parris?

A. From Mr. McCafferty when I moved to the station.

Q. I see. But you didn't buy them from Mr. Parris?

A. They had been purchased from him.

Q. They had been?

A. Sure, I assume that they had.

Q. Mr. Matthews, you stated that you received advertising material from Goodyear. Prior thereto did you receive advertising material from Lee?

A. Certainly.

*Q. Was there any charge for that advertising?

A. Not to my knowledge, no.

Q. Are you familiar with the gentleman referred to as the phantom customer inspector of Atlantic?

A. No.

Q. Did you ever have your station inspected as far as you know?

A. In regards to what now? Maybe I'm not clear.
550 on this when I answered.

Q. With respect to over-all operations?

A. Oh, sure. Sure.

Q. And how often would that occur?

A. Depending on what condition he found the station in.

Q. What do you mean by that?

A. Well, if you got a poor score why he came back oftener.

Q. Did you know when the phantom would be in the station or when the phantom was coming?

A. No.

Q. Do you recall attending Atlantic dealer meeting at Kosticks Restaurant during the summer of 1952?

A. No. It's possible that I did, but I can't just exactly say.

Q. Do you recall attending a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation came up?

A. No. Not definitely, no.

In 1953, I think it was in March, there were two men came into my place and conducted an investigation and I remember them at that time, but whether that was the only time I was ever approached from anybody from the Trade Commission.

Q. I'm referring now to a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation was mentioned. Do you recall any such meeting?

551 A. I remember one meeting we had when—but I can't say when it was exactly, when we were told that there was an investigation going on and that we were free to buy where we saw fit and so on and so forth; and that's what we were told at the meeting, but then after the meeting when the salesman came around and talked to us individually we were told something else.

Q. What else were you told?

Mr. Correa: May I ask, if your Honor please, that counsel identify who is "we" and who is doing the telling that all of this remains in the midst of anonymity.

By Mr. Kelaher:

Q. At the meeting you referred to, who made the statements you have just alluded to?

A. At the meeting?

Q. Yes.

A. Representatives of the company, Atlantic.

Mr. Thompson: Who were they, is your next question.

Mr. Correa: And who was the "we"?

By Mr. Kelaher:

Q. Do you recall the name of the Atlantic representative who made the statement at the meeting?

A. Our salesman at that time was there, Mr. Arnholt was there.

Q. What was his name?

A. I can't tell you who the salesman was at that 552 time because I can't recall exactly when the meeting was.

Q. Did Mr. Arnholt make any statements?

A. The speeches were made and Mr. Arnholt took part.

Q. He took part?

A. Yes, sir.

Q. And you stated at the meeting he stated the substance of what you just mentioned, right?

A. Correct.

Q. After that time—

Mr. Correa: May we have the "we" identified? The witness says "we were told this," there's been no identification of who "we" was.

The Witness: The Atlantic dealers, as you might suppose that's who it would be.

By Mr. Kelaher:

Q. This was meeting of the Atlantic dealers?

A. That's correct.

Q. Now, after the meeting you have reference to you stated Atlantic salesman came in and told you something else, is that right?

A. That's correct.

Q. Now, who was the Atlantic salesman who came into your place?

A. Mr. Way.

Q. What did Mr. Way tell you?

553 Mr. Correa: May we have the time fixed?

By Mr. Kelaher:

Q. Yes. We are trying to.

A. Yes, it was early in 1953.

Q. And what did Mr. Way tell you?

A. That's when Mr. Way and I had the trouble that I just went through, the whole thing, lease, cancellation and so forth.

Q. I see.

Was that when he told you that you should not carry Lee tires?

A. That's right.

Q. At that Atlantic dealer meeting that you have reference to was any mention made of a Federal Trade Commission investigation?

A. I couldn't honestly say.

Mr. Kelaher: No further questions, your Honor.

Mr. Thompson: May we have just a minute?

Hearing Examiner Kolb: Yes.

(Discussion off the record.)

Hearing Examiner Kolb: Do you want to excuse the witness now until tomorrow morning at 9:00 o'clock. Is that it?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Is that all right with you,
554 Mr. Matthews?

The Witness: Yes, sir.

Hearing Examiner Kolb: All right; tomorrow morning
at 9:00 o'clock.

Mr. Dias: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I would like to call Mr. Hinderscheid to the stand, please.

W. F. HINDERSCHIED was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. W. F. Hinderscheid, 1139 Rock Creek Road, Gladwyne, Pennsylvania.

Q. Are you here in response to a subpoena, Mr. Hinderscheid?

A. Yes, I am.

Q. And what is your position with Lee Tire and Rubber Company?

A. Lee Rubber and Tire Corporation, I'm Vice President in Charge of Sales.

555 Q. You are Vice President in Charge of Sales of Lee Rubber and Tire Corporation, right?

A. That's right.

Q. Now, would you please explain the relationship between Lee Rubber and Tire Corporation and Lee Tire and Rubber Corporation, isn't it?

A. Well, at the present time there isn't any. All there is is Lee Rubber and Tire Corporation. Prior to a year ago, why, Lee Tire and Rubber Company of New York, Inc. was a sales company which was a subsidiary of Lee Rubber and Tire Corporation.

Q. But since that time it has been—

A. (Interposing.) Abolished, the Lee Tire and Rubber Company. Now it's Lee Rubber and Tire Corporation.

Q. For how long a period have you been Vice President in Charge of Sales?

A. November 1, 1948.

Q. Mr. Hinderscheid, prior to about March 1951 Lee had a sales contract with Atlantic Refining Company, is that right?

A. That's right.

Q. And when did that contract first become effective?

A. Well, I can't tell you just when that particular contract became effective because there had been contracts prior to that particular one.

556 Q. Yes. Well, when did the relationship with Atlantic first begin, that's what I'm trying to find out.

A. June 10, 1932.

Q. And that was the first contract entered into with Lee—between Lee and Atlantic, is that correct?

A. That's correct.

Q. And how long did the Lee-Atlantic contract remain in effect? I'm talking about the series of contracts?

A. Well, the series of contracts from June 10, 1932 to March 15, 1951.

Q. And during the period when the Lee-Atlantic contract was in effect what was your form of distribution of Lee tires to the Atlantic market?

A. Our form of distribution to the Atlantic market was we had tires with the Atlantic Refining Company and they distributed to their dealers and service stations.

Q. Did you sell such tires to Atlantic Refining Company?

A. Yes.

Q. Did Lee physically deliver the tires to Atlantic for their warehousing and redistribution?

A. No, we delivered them to the Atlantic warehouses, they did the distribution themselves.

Q. And were there Atlantic warehouses in the entire marketing area in which Atlantic sells petroleum products?

A. I beg your pardon?

557 Q. Did you sell and distribute Lee tires to Atlantic's entire marketing area?

A. Not their entire marketing area; no.

Q. What part of it didn't you sell and distribute Lee tires to?

A. Well, I think they had marketing in the State of Ohio and we didn't have any Lee tires out there with Atlantic.

Q. Aside from that exception you sold and distributed tires to Atlantic in the remainder or the greater portion of their market?

A. I would say we did in a greater portion up until March about 1950.

Q. What happened in March 1950?

A. Well, Atlantic tested out distribution on a different basis in two or three spots between March 1950 and March 1951.

Q. And would you please name those areas?

A. Erie, Pennsylvania; Wilmington, Delaware; Newark, New Jersey.

Q. And were you advised by Atlantic that they were to undergo these so-called tests in those areas?

A. Yes.

Q. And were you also advised by Atlantic to solicit the sale of Lee tires in those test areas?

A. It was agreeable with Atlantic Refining Company for us to do so.

558 Q. I'm referring now to the sales to Atlantic stations.

A. Yes, sir.

Q. Now, Mr. Henderscheid, did you bring with you documents as specified in Specification 1 of the subpoena duces tecum?

A. Well, I had two different letters here—

Hearing Examiner Kolb: You may want to refer to this.
(Handing document to the witness.)

The Witness: Specification I. I have it.

By Mr. Kelaher:

Q. Specification I.

A. I have it here.

Q. Are those documents authentic records of the Lee Tire and Rubber Company?

A. You're ~~talking~~ ^{talking} -

Q. I'm talking about the documents referred to in specification I of the subpoena.

A. Number I?

Q. Yes.

A. Yes.

Q. In addition to Specification I you were also requested to furnish certain data in Specification II. Do you have that material with you?

A. Which is Specification II?

Q. That is attached to the subpoena.

A. Yes, I have that.

Mr. Thompson: If you are showing something to
559 the witness, may counsel see it, Mr. Kelaher?

Mr. Kelaher: Certainly.

The Witness: That is Specification II you ask here for a list of Lee factory branches as of January 1, 1950.

By Mr. Kelaher:

Q. That's right. Do you have such a list?

A. Yes.

Q. And in the second request it asks for a list of Lee factory branches set up in the Atlantic Refining Company marketing areas subsequent to January 1, 1950 together with month and year each branch began operations.

A. I have that.

Q. And do you have the item called for in item 3?

A. I have that.

Q. And the last was for number and names of personnel referred to in items 1 to 19 inclusive of Specification I. List of official positions as of dates of documents.

A. I have that.

Mr. Kelaher: If agreeable to counsel we would like to have the photostatic copies called for in Specification I used in place of the originals.

Mr. Thompson: What do you mean by used?

Mr. Kelaher: For introduction into evidence.

Mr. Thompson: You mean to put into evidence?

Mr. Kelaher: Yes, sir.

560 Mr. Thompson: Well, unless I'm sadly mistaken, you are not going to get most of them in evidence. I have no objection to the offer.

Hearing Examiner Kolb: You will make them for identification.

Mr. Kelaher: (To the witness.) May I have the documents?

The Witness: The ones that you sent to me, the photostatic copies? I have them numbered 1 to 19, the way you —numerical order.

Mr. Kelaher: And you also have the answer to specification—

The Witness: I have the answers to Specification II to number 1, number 2, number 3 and number 4.

Mr. Thompson: Unless it's a military secret could we know what Specification II is?

Mr. Kelaher: You certainly may.

Mr. Thompson: Is there a copy counsel could see?

Mr. Correa: I join the request, although I gather this has nothing to do with my client's part of the case.

Hearing Examiner Kolb: Do you want the documents marked for identification by the reporter?

Mr. Kelaher: Just a second, your Honor.

Off the record, your Honor.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

572 Mr. Kelaher: I would like to have the next document identified as Commission Exhibit 277. This is a letter dated June 16, 1950 from W. F. Hinderscheid to Mr. S. J. Heideman, Manager, TBA Sales, Atlantic Refining Company, Philadelphia, Pennsylvania.

573 (The document referred to was marked Commission's Exhibit 277 for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I show you Commission Exhibit 277 and ask you if this is a copy of a letter you sent to Mr. Heideman, dated June 16, 1950 (handing document to the witness).

A. Yes.

Mr. Kelaher: I now offer Commission Exhibit 277 into evidence.

Mr. Correa: I'll have to have a moment, if your Honor please. I have an exceedingly bad photostat which is going to take me a moment or two to read.

Mr. Thompson: Atlantic obviously has no objection to the offer, sir.

Mr. Correa: If your Honor please, on behalf of Goodyear we do object to this document. It is apparent that there has been no foundation laid as against Goodyear; no claim is made as I understand it that Goodyear had any notice of this document or that this document came from the files of Goodyear or has anything to do with Goodyear.

Further on the face of the document it is perfectly apparent from its context as well that it refers wholly and solely to some dealings taking place between Atlantic Re-

fining Company and Firestone Company which is, as to Goodyear, completely res inter alios acta and, therefore, I object to its being offered in evidence against Goodyear.

Hearing Examiner Kolb: This is a survey made just prior to taking over the Goodyear line?

Mr. Correa: Well, I don't know—

Mr. Kelaher: That's correct, your Honor. There was a test survey with Goodyear in Newark, New Jersey, and with Firestone in Erie, Pennsylvania and Wilmington, Delaware.

Mr. Correa: I see no reference to Goodyear in it and further I don't see even if it did refer to Goodyear how it could possibly be binding on Goodyear and how its introduction into this trial against Goodyear could fail but to commit hopeless prejudice against Goodyear in respect to the trial of the issues posted in the complaint herein.

Hearing Examiner Kolb: Overruled. The document will be received in evidence as Commission Exhibit Number 277.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 277, was received in evidence.)

Mr. Kelaher: I now ask the reporter to identify as Commission Exhibit 278 for identification a tabulation from Mr. D. R. McAvoy, dated 3/7/51, entitled "Monthly Sales to Atlantic Refining accounts in Newark District," to Messrs. Hinderscheid, Pettingell and Segur. That is Item 4 of Specification I of Mr. Hinderscheid's subpoena.

575. (The document referred to was marked Commission's Exhibit 278 for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I hand you Commission Exhibit 278 for identification and ask you to state what that is. (Handing document to the witness.)

A. That is the volume of sales that was done with Atlantic dealers and stations in the Newark District for the period between June and December inclusive—

Q. Of what year?

A. 1950.

Q. And during that period didn't Atlantic conduct a so-called test program with respect to Goodyear TBA in the Newark district?

A. As far as I know they did.

Q. And wasn't the purpose of this tabulation to inform you and other officials of Lee what sales were actually made to Atlantic refining accounts in the Newark district during that period?

Mr. Correa: I object, if your Honor please, to counsel leading the witness on this kind of thing. Counsel is telling the witness what the purpose of the tabulation was rather than vice versa, and I submit that vice versa is the proper and only proper procedure.

Mr. Kelaher: I'm asking—

576 Hearing Examiner Kolb: I think counsel is correct.

You take a round-about-way of doing it. Go ahead.

By Mr. Kelaher:

Q. In June 1950, was Lee selling Atlantic Refining Company tires for distribution in the Newark, New Jersey district?

A. Yes.

Q. With respect to July 1950, were sales being made by Lee to Atlantic for distribution by Atlantic sales and distributors in the Newark, New Jersey district?

A. No.

Q. And does that same answer apply to August, September, October, November and December of 1950?

A. Yes.

Q. Now, would you please state what the column headed "Dollar Sales" and underneath that is "Month," and

underneath that is "ACC." Would you please state what they mean?

A. Well, the dollar sales means the volume of business that we did in those particular months which are listed on the left hand side and the ACC means accumulative.

Q. Now, who was the Charles W. Krieg Company?

A. A warehouse distributor that handles our tires in the Newark district.

Q. And what is the reference to New York branch mean?

A. We had a branch in New York City, our own operated.

Q. Does that refer to sales by the New York branch 577 during the months indicated?

A. That's right.

Q. In the Newark district?

A. Not in the Newark district.

Q. It states at the top, "Monthly Sales to the Newark Refining District."

A. That means the Newark district as far as Kreig is concerned and I presume in the Newark district we are figuring certain portions that our New York branch handled there that would come under the marketing area of the Newark district for the Atlantic Refining Company.

Q. In other words, as I understand your answer, this tabulation would relate to sales made by Lee to Atlantic accounts in Atlantic's Newark sales district, is that correct?

A. It would to the extent we were able to figure that's what it covered.

Q. Right. And down at the very bottom of the tabulation there is a heading "1949 AR Co. Sales based on 13.7 percent regional sales (last 6 months, 1949.)" Would you explain what that means, please.

A. Well, that is a figure that we estimated and we had no specific way of knowing, but it was purely an estimate on our part as to the amount of business we received

through Atlantic Refining Company when they were handling Lee tires.

I couldn't say that that figure was correct because, 578 it was more or less an estimate.

Q. I see.

A. We had no way of knowing.

Q. And this column entitled up at the top "Passenger tires" there are four columns, Passenger tires, truck tires, PASS tubes, TR tubes, and underneath that, Month and ACC, under each one. Would you explain what that is, please?

A. Under Pass period tires, that means passenger tires, and the month was the individual month and the ACC is the accumulation, and under Truck tires, why, it's the same as passenger tires, and passenger tubes and truck tubes, we use the same formula on the four of them as we did on the dollar or the monetary value.

Q. And does the number 676, for example, under July, Passenger Tires, represent the unit number of tires sold or dollar volume?

A. 676?

Q. Yes.

A. Unit, passenger tires sold.

Q. Thank you.

Mr. Kelaher: Mr. Examiner, I offer Commission Exhibit 278 in to evidence.

Mr. Thompson: Now, may I inquire the purpose of the offer, sir?

Mr. Kelaher: Yes. The purpose is to show, I think 579 it is self-explanatory, is to show sales made by Lee to Atlantic accounts in Atlantic's Newark district during the period mentioned on the tabulation.

Mr. Thompson: Is it the purpose to compare sales by Lee during certain months of 1949 with certain sales made during the same months of 1950?

Mr. Kelaher: Yes, it is. I think that comparison is made on the tabulation.

Mr. Thompson: Mr. Examiner, I object to the exhibit as completely meaningless because of Mr. Hinderscheid's statement which I was quite sure he would have to make, that the 1949 sales represent 13.76 percent of the regional sales made by Atlantic during 1949 and that was just a guess figure. It is perfectly obvious that instead of guessing 13.76 percent of Atlantic's sales in this particular region if Mr. Hinderscheid's people had guessed 6 percent, the comparison would have been exactly the opposite, the other way. It would have shown an increase in 1950 over 1949 instead of a decrease; unless there is some basis for the 13.76 percent, I submit the whole exhibit does nothing but encumber the record.

Hearing Examiner Kolb: Do you have any remarks on this, Mr. Kelaher?

Mr. Kelaher: Yes, I would like to ask the witness a further question along that line.

580 Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Hinderscheid, what was the 13.76 percentage based upon?

Mr. Thompson: If you know, sir, of course.

By Mr. Kelaher:

Q. If you know?

A. The 13.—this sheet shows 13.7 percent, as near as we could figure, why the 13.7 percent was the regional sales of the New York region for the Atlantic Refining Company, as I said before, when we applied it to Newark why it was an estimate on our part and I wouldn't—couldn't verify that this was 13.7 of 14.2 or 12.6.

Q. Was that the best estimate of your—

A. That is the best estimate that we could make.

Q. At the time?

A. At the time, that's right, but I couldn't say that this was an accurate figure.

Q. Was that estimate made for purposes of comparison with the 1950 figures?

A. Well, that's what we did on this sheet, made a comparison.

Q. That was the purpose of it, was it not?

A. That's right.

Q. And why were you forced to make an estimate?

A. We weren't forced to make an estimate.

581 Q. Why did you make an estimate?

A. We wanted to see how we were going from a sales standpoint.

Q. And wasn't it true, that the only alternative you had was to make an estimate because you, prior to that period in 1950, you had sold Lee tires to Atlantic and Atlantic had resold the tires in the Newark area? Isn't that correct?

A. They did, but we had this warehouse distributor of ours at the same time.

Q. So you could tell from your own records the points of distribution to Lee tires going into the Newark district, isn't that correct?

A. The main thing was to see what was necessary for us to increase our sales in that particular area. That was the main reason for it.

Q. And you knew that the distribution points you have mentioned there, you have listed on the tabulation, were the points which distributed Lee tires to Atlantic for resale into the Newark district before the Goodyear TBA test program began in that district. Isn't that correct?

A. I don't quite follow you.

Q. Well, let's put it this way. Prior to about June 1950 you were selling Lee tires to Atlantic, isn't that right?

A. That's right.

Q. And they were being distributed from certain distribution points, isn't that correct, to Atlantic?

582 A. That's correct.

Q. So that Atlantic itself had the record of sales to Atlantic accounts in the Newark district, isn't that correct?

A. I don't know, I presume that they did.

Q. Well, you were selling to Atlantic and not to the dealers?

A. We were selling to Atlantic.

Q. Right. So in order to make a comparison you had to estimate what the sales volume was to the dealers?

A. I might clarify this. We had no way of knowing what Atlantic's sales were in the Newark area because the Newark area as far as Atlantic was concerned, the reports that we received from Atlantic Refining Company not only included Newark but they included Syracuse, Rochester, Buffalo, Binghamton and so on, see, and I knew in that particular area of the whole of New York State that they were running approximately 13.7 or thereabouts and that is the reason I used that particular figure.

Q. So you personally—

A. (Interposing.) No, as far as Newark was concerned, Newark could have been lower than that, or it could have been higher but I had our people use the best figures that we had available. I knew that they weren't accurate.

Mr. Kelaher: Your Honor, I think it is clearly admissible.

583 Hearing Examiner Kolb: Any further objections?

The objection will be overruled, the document will be received in evidence as Commission Exhibit Number 278.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 278, was received in evidence.)

Hearing Examiner Kolb: We will recess for five minutes.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, I would like to have the next document identified as Commission Exhibit 279-A through D, which is identified as Item 5 on Specification I on Mr. Hinderscheid's subpoena, it may be described as follows: It is a memorandum and attached three page tabulation from H. K. Paxson to Messrs. Hinderscheid, McCreery and Segur, the first sentence of which reads, and I quote:

"This will complete the record for Atlantic's test districts . . ."

That would be 279-A.

Exhibit 279-B is a tabulation attached thereto identified as follows: "Month by month sales to Atlantic Refining Company accounts in Erie District," signed with the name H. K. Paxson, and the date 3/16/51 thereon.

584 Exhibit 279-C is also appended thereto and it is identified as "Month by Month sales to Atlantic Accounts in Wilmington district." With the name H. K. Paxson and the date 4/2/51 appearing thereon and also the names Messrs. Hinderscheid, Segur and Niedringhaus.

Exhibit 279-B also had the names Messrs. Hinderscheid, McCreery, and Segur thereon.

Exhibit 279-D states "Monthly sales to Atlantic Refining Accounts in Newark district," with the name H. K. Paxson and the date 4/11/51, with the names Messrs. Hinderscheid, Pettingell, and Segur thereon.

(The document referred to was marked Commission's Exhibit 279-A through D inclusive for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I would like to call your attention to Exhibit for identification 279-A which is the first page of this group (handing document to the witness), and ask you to state what that means?

A. Page 4 here is the same as I just finished testifying on on the Newark—

Q. (Interposing.) That is 279-D that he has reference to now, your Honor, and that is the same as Commission Exhibit 278, correct?

A. That's correct.

Q. Excepting it is for a longer period, isn't that right?

585 A. Yes, it's for two additional months, January and February.

The page 2 covers the number of accounts that had been handling Atlantic products dealers and service stations in the Erie district—

Q. That is CX id. 279-B. Does that run for what period?

A. April of 1950 to February 1951.

Q. And is the data included thereon similar to that you testified to with respect to Commission Exhibit 278?

A. Well, it doesn't have exactly the same information. It does as far as dollar sales are concerned, but it doesn't have the units as 278 had.

Q. Right.

And would you please describe what would be sheet number 3 which is Commission Exhibit for identification 279-C.

A. You have reference now to the Wilmington district on it?

Q. Yes.

A. I don't know what number these are.

Q. To the Wilmington district.

A. Well, that is the same as the Erie—similar information as the Erie and Newark.

Q. And do the 1949 figures contained on these tabulations, 279-B and C reflect the best estimate that could be made by you and your staff with respect to 1949 sales to Atlantic accounts in the areas designated?

586 A. Well, we used the same formula on Wilmington and Erie as we did on the Newark set up.

Mr. Kelaher: Your Honor, I would offer 279-A through D into evidence.

Mr. Correa: If your Honor please, may I ask your leave to ask the witness a question or two on voir dire with respect to a possible objection I have to this exhibit or significant parts thereof?

Hearing Examiner Kolb: Yes.

Voir Dire Examination by Mr. Correa.

Q. Sir, referring to 279-B which is the second page of the exhibit before you, what is the significance of the Erie district in connection with that tabulation?

A. Well, Erie was—279-B!

Q. Yes, it is the second page of the exhibit before you.

A. Well, Erie was a test case the same as Newark and Wilmington was as far as Atlantic was concerned.

Q. Test of what, sir?

A. Of the selling of other than Lee products there, in fact, as far as Erie is concerned, why, it was a testing out of the Firestone.

Q. Firestone?

A. Firestone in Erie.

Q. And I draw your attention to 279-C, being the 587 third page of the exhibit before you and ask you, sir, with respect to that tabulation what is the significance of the Wilmington district?

A. Well, that was a test case on Firestone tires in Wilmington.

Q. That is also concerned with Firestone?

A. That's right.

Mr. Correa: If your Honor please, I object to this exhibit in its totality, because it's already been stated by the witness that 279-D is no more than another copy of 278 already in evidence; so I take it that part of the exhibit in and of itself would furnish no warrant for its admission at this juncture.

I object to the admission of 279 with particular reference to 279-B and C because they refer to matters between Atlantic Refining Company and Firestone and do not involve the Goodyear Tire and Rubber Company and the respondent in the proceeding whom I represent. I submit, if your Honor please, that not only are they objectionable on the ground I have stated earlier, *res inter alios acta*, but in addition their admission into this proceeding is prejudicial to the respondent Goodyear and would result in the denial to that respondent to rights to proceed with due process to which it is entitled as well as its rights under the administrative procedure act and other relevant law.

588 Hearing Examiner Kolb: Any objection to me seeing a copy of it?

Mr. Kelaher: No, Mr. Examiner. I would like to correct counsel, he is under the mistaken impression that 279-D is the same as Commission Exhibit 278.

Exhibit 279-D includes the months of January and February 1951 which are not on Commission Exhibit 278 in addition to the same data which is on Commission Exhibit 278.

Mr. Correa: The witness has said they were the same, if your Honor please. Maybe the counsel is right and the witness is wrong.

The Witness: That's right. There are two additional months on it.

Hearing Examiner Kolb: I understood him to say it included a couple of more months.

Mr. Correa: In that event, if your Honor please, I will make my objection specifically to 279-B and C.

Hearing Examiner Kolb: I don't understand, Mr. Hinderscheid, you speak of a comparative tabulation. Doesn't this show the number of accounts you sold and the amount of sales in that particular area? Is that it or what does that show?

The Witness: That shows the number of accounts that we sold by months and the dollar volume of business. That is, your Honor, if you have 279—

589 Hearing Examiner Kolb: What connection does that have to do with Firestone?

The Witness: Well, it just so happened that in that particular area, the test case was on Firestone tires, whereas in the Newark test case it was on Goodyear tires.

Hearing Examiner Kolb: Regardless of who you were testing, this shows the sales of Lee in that particular area for the particular months?

The Witness: That's right.

Hearing Examiner Kolb: Any objections, Mr. Thompson?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Thompson: I have a couple of questions on voir dire first, if I may.

Voir Dire Examination by Mr. Thompson.

Q. I didn't understand, sir, referring now to B which is the second page and relates to the Erie district.

A. Yes, sir.

Q. How you got the 26.66 percent of Atlantic's 1949 sales in order to make a comparison with your own 1950 direct sales.

A. Well, where we arrived at the 26.66 percent was that of all of our sales to Atlantic Refining Company, 26.66 per-

cent was made in the Western Pennsylvania Region for Atlantic Refining Company and that is the only information that we had available to determine approximately how 590 many Lee tires Atlantic Refining Company sold in the Erie district because the Erie district was part of the Western Pennsylvania region. So, with the limited information that we had available why we used the information that we had available and we were assuming that Erie would be about the same as the remainder of Western Pennsylvania, that is I couldn't say that the 26.66 was accurate for Erie, it could be a different figure as far as Erie was concerned, but it was the best figure we had available to use to make a calculation.

Q. But, you do know sir, from the exhibit, if I may pursue that a little further, you do know from your own records that in 1950, during the test period, that is 1950 and in January and February of 1951, your company sold \$94,853.29 in value of tires in the Erie district. Is that correct, sir?

A. That's right.

Q. Then when you make your comparison with the Atlantic Refining Company sales for ten months you derive a figure of \$99,599.39 by using a percentage of 26.66 percent. Is that correct, sir?

A. Yes, sir.

Q. In other words, you allocated to Erie 26.66 percent of the sales which had been made to Atlantic for the Western Pennsylvania region in 1949. Is that correct, sir?

A. I have to think a little on it, it's been seven or 591 eight years since these figures had been made up.

Q. It is very confusing to me, sir, that is why I'm asking you these questions.

May I restate the same question in perhaps a more simple manner?

A. Yes.

Q. You were assuming for purposes of exhibit 279-B that in 1949, 26.66 percent of the sales made to Atlantic's Western Pennsylvania region had been for dealers in the Erie district. Is that correct?

A. That's right.

Q. Did you have a basis for that 26.66 percent figure, sir? Do you know why—

A. (Interposing.) At this time I can't tell you why the 26.66 percent—

Q. (Interposing.) Then when you come to Exhibit 279-C which refers to the Wilmington district you used a 12 percent figure, is that correct?

A. That's right. There it is.

Q. And was that estimate also made by you for purposes of determining what the Wilmington district sales of Atlantic Refining Company had been in 1949 as compared with a much larger region?

A. I don't think the 12 percent or the 26.66 percent that I arrived at those figures, that is the people that 592 worked these reports up, why, arrived at those figures and they were the best figures that they had available to work with. I didn't work up the figures at all.

Q. And you are not presently able to explain what method they used for computing it?

A. No.

Mr. Thompson: I object, sir, simply because I think all of these exhibits ought to be better authenticated than Mr. Hinderscheid is able to do. I am not referring any criticism of him in his position, he wouldn't know how these things were made up.

By Mr. Kelaher:

Q. Mr. Hinderscheid, who was Mr. H. K. Paxson whose name appears on those documents?

A. At that time, when those reports were made up, Mr.

Paxson was manager of our marketing research department and I might explain that on the one there for New Jersey or Newark there, why, we had Mr. McAvoy who had been previously manager of Marketing Research, Mr. McAvoy left the company and Mr. Paxson took over at that time as manager of Marketing Research.

Q. Mr. Hinderscheid, were these estimates made by men in the Lee organization qualified to make such estimates?

A. Well, I thought they were qualified.

Q. Thank you.

593 A. I don't know if they were qualified or not, but I thought they were.

Q. Well, the manager of the Market Research would have certain skills along those lines, would he not?

A. I imagine he had certain reasons to make a 26.66 instead of some other figure.

Q. Thank you.

Mr. Thompson: I think, sir, that this sort of tabulation is obviously proper for inter-company information but when you come to a law suit where an issue is whether the Lee company did or did not lose sales in a particular period of time, I think it's entirely too vague to be worthy of credibility and therefore of admissibility.

Mr. Kelaher: Mr. Examiner, I would like to call your attention to the fact that the same considerations are present here as were present when we discussed Commission Exhibit 278 which was admitted into evidence.

Hearing Examiner Kolb: The objection will be overruled, the document will be received in evidence as Commission's Exhibit 279-A to D.

(The document referred to, heretofore marked COMMISSION EXHIBIT 279-A through D inclusive, was received in evidence.)

Mr. Correa: Does that apply, your Honor, to our objection?

594 Hearing Examiner Kolb: I am passing on all objections made before me at the time.

Mr. Correa: Do these two parts of the exhibit having to do with another company not a respondent here—we are expected to defend as to what Firestone did, if your Honor please, or didn't do?

Hearing Examiner Kolb: I made my ruling.

Mr. Kelaher: Your Honor, I would like to have the document marked as Commission Exhibit for identification 280 which is a memorandum which is titled "Memorandum for Lee operating staff dated February 16, 1951 from Mr. A. A. Garthwaite, President, to Messrs. Brasaemle, Garthwaite, Jr., Hinderscheid, Leach, Nellen and Pouchot.

(The document referred to was marked Commission's Exhibit 280 for identification.)

Mr. Kelaher: It is also noted thereon that carbon copies went to Messrs. Conway, Dollison, Ikirt, Ingersoll.

By Mr. Kelaher:

Q. Mr. Hinderscheid, I show you Commission Exhibit for Identification 280 and ask you to state if that is an authentic copy of the memorandum from Mr. Garthwaite to you and others?

A. That's right.

Q. And where the other gentlemen named on the document members of the Lee Organization?

A. Lee Rubber and Tire Corporation, yes.

595 Mr. Kelaher: Your Honor, I offer Commission's exhibit for identification 280 into evidence.

Mr. Correa: May I inquire for what purpose, if your Honor please?

Mr. Kelaher: Your Honor, this is a document which is dated February 16, 1951, from the President of Lee to Lee operating personnel concerning the Lee-Atlantic contract, which expired on or about that date.

Hearing Examiner Kolb: Have you another copy here I could see?

Mr. Thompson: If anyone can read that document, I might object to it.

Mr. Correa: That is why I asked the purpose, because I can't read it.

Hearing Examiner Kolb: Any objection?

Mr. Correa: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's exhibit 280.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 280 for identification, was received in evidence.)

Mr. Kelaher: Your Honor, I would like to have marked as Commission's exhibit for identification 281-A and -B a two-page memorandum dated February 19, 1951 entitled "Sales Meeting," and the first sentence of which reads 596 as follows: "1. Atlantic Refining Company Contract cancelled effective March 1, 1951".

(The document referred to above was marked Commission's exhibit 281-A, -B for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I hand you Commission's exhibit for identification 281-A and -B and ask you to describe what it is, please?

A. This was an agenda for a sales meeting called for February 19, 1951 to advise our sales staff of the cancellation of the contract that we had with Atlantic Refining Company.

Q. Where was the meeting held?

A. Why, this meeting was held in Conshohocken, at our general office.

Q. And were you present at the meeting?

A. I was.

Mr. Kelaher: I offer Commission's Exhibit 281-A and B in evidence.

Hearing Examiner Kolb: Any objection?

Mr. Correa: If your Honor please, the document is not, I suppose, in any sense prejudicial, but I am constrained as a member of the Bar to object to loading the record with this type of trivia. This is an agenda of a sales meeting; presumably the meeting took place; presumably they followed the agenda; maybe they didn't, who knows.

But what earthly use this can have toward the advancement of the determination of the issues of fact in this case, I must confess escapes me entirely and I can't sit here and let the record be loaded with inconsequential material of this character and I object to it on that ground.

Mr. Kelaher: Your Honor, I would like to call your attention to the date, February 19, 1951, which was the month during which Lee's contract with Atlantic, which had been in effect from 1932 on, was terminated.

Mr. Correa: I don't deny for a moment it is a significant time, your Honor, in terms of the facts of the case. All I am saying is that the probative value of this piece of paper is nil and we are just loading the record.

Mr. Thompson: If your Honor please, I hate to disagree with my friend, but I think this paper, at least in one respect, has great significance and great probative value.

Now I particularly call your attention to item 2 c "Atlantic dealers and distributors are free to handle Lee tires and other accessories once bought through Atlantic." That is a fact we would almost admit in this case, Mr. Correa.

Mr. Correa: That is conceded. I don't think there is any doubt about that. It is cumulative.

Hearing Examiner Kolb: The objection will be overruled. The document is received in evidence as Commission's exhibit 281-A and -B.

598 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 281-A and -B for identification, was received in evidence.)

Mr. Kelaher: Your Honor, I would like to have marked for identification as Commission's exhibit 282-A and -B the letter from Mr. Hinderscheid, W. F. Hinderscheid, Vice President in Charge of Sales, to all Atlantic dealers, dated February 20, 1951, with a postcard attached, identified as Commission's exhibit 282-B.

(The document referred to was marked Commission's exhibit 282-A and -B for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, is this your signature appearing on Commission's Exhibit 282-A?

A. Is that my signature?

Q. Yes.

A. No, that isn't my signature.

Q. Is that your name?

A. Yes, but it is not my signature.

Q. Did someone sign it for you?

A. They did.

Q. With your permission?

A. Yes, with my permission, but it is not my signature.

Mr. Kelaher: I now offer Commission's exhibit 282-A and -B into evidence.

599 Hearing Examiner Kolb: Any objection?

Mr. Correa: No objection.

Mr. Thompson: No objection.

Hearing Examiner Kolb: It will be received in evidence as Commission's exhibit 282-A and -B.

(The document referred to, heretofore marked COMMIS-

SION'S EXHIBIT 282-A and -B for identification, was received in evidence.)

604 By Mr. Kelaher:

Mr. Hinderscheid, there are several tabulations here beginning with Commission's exhibit for identification 290, and on through several others, in which reference is made to AR accounts and DAR accounts. I would like you to explain what those symbols mean.

A. Well, the AR accounts means those accounts that are handling Atlantic or were handling Atlantic Refining Company products.

Q. They are Atlantic outlets, is that right?

A. To the best of our knowledge, they were. And the DAR accounts are other accounts that we kept a record of that our salesmen were out trying to get a contract for or sign up to replace some of these Atlantic refining company accounts that we know wouldn't buy other brands of tires.

Q. Well, my understanding then is that you mean the DAR accounts refer to non-Atlantic service stations?

A. That is right. But it was due to the cancellation of the Atlantic Refining Company contract, but they had nothing to do whatsoever with Atlantic Refining Company; they were other accounts we signed up and started to sell.

Mr. Kelaher: Mr. Examiner, I would like to offer these documents into evidence, beginning with 283 A through C inclusive through 293-A through B, with the exception of the portions of those which appear in certain of the 605 documents beginning I believe with Commission's exhibit 290 A through I, where reference is made to DAR accounts. We are offering only the portions of those tabulations which refer to AR accounts, which reflect sales to Atlantic Refining outlets.

Hearing Examiner Kolb: Any objection?

Mr. Thompson: I am in a fair state of confusion with respect to the exhibits that have AR and DAR accounts on them, and I would like to look at them before I answer. I can answer as to the rest of them very quickly. I think those exhibits are 290 and 291 and 292.

Hearing Examiner Kolb: What do the initials DAR stand for?

The Witness: Those were accounts that we, after cancellation of Atlantic Refining Company contract, that we were able to go out and sign up immediately.

Hearing Examiner Kolb: They were still Atlantic Refining Company?

The Witness: No, they weren't handling any Atlantic products; they were just other accounts.

Mr. Kelaher: In the same area?

The Witness: Yes, approximately the same area.

Hearing Examiner Kolb: Then the AR doesn't refer to Atlantic Refining?

The Witness: It was just a designation as far as we were concerned.

606 Mr. Thompson: May I ask a question or two on Voir Dire?

Hearing Examiner Kolb: All right.

Voir Dire Examination by Mr. Thompson.

Q. I wonder whether you are not mistaken inadvertently about that. I am showing you one of those exhibits, and I refer you to the AR accounts and the column referring to DAR accounts, and I ask you whether the DAR accounts weren't Atlantic Refining Company Distributors?

A. No, they weren't.

Q. Are you sure of that?

A. I am positive.

By Mr. Correa:

Q. Sir, is the DAR, does that stand for anything, does that stand for any words beginning with the letters DAR respectively?

A. I will tell you what this stands for as far as words are concerned. Due to Atlantic Refining Company cancellation of the contract.

Q. Then these are former Atlantic Refining Company—

A. (Interposing.) It had nothing to do with Atlantic Refining Company whatsoever.

Mr. Thompson: Your Honor, in view of that—the hour is getting very late—I wonder if we might have a 607 chance to review these particular exhibits, in view of the witness' explanation because it puts them in an entirely new light so far as I am concerned. I had thought, in reviewing this before, and trying to understand and analyze them, that DAR meant distributor of Atlantic Refining Company, and now I have to take time to try to understand them in the light of Mr. Hinderscheid's explanation. So, could we reserve any objection we might have to these three exhibits until in the morning?

Hearing Examiner Kolb: Is it something Mr. Hinderscheid might have to explain. He wasn't to be here tomorrow.

Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: May I ask the status of those documents?

Hearing Examiner Kolb: They are just identified. I thought Mr. Thompson wanted to wait until tomorrow morning to have them offered.

Mr. Thompson: That was only the three.

Mr. Correa: I join him in the objection to those three, but I have no objection to the others.

Mr. Thompson: I have an objection, sir, to 289.

Hearing Examiner Kolb: Off the record.
(Discussion off the record.)

(Witness temporarily excused.)

608 Hearing Examiner Kolb: Let's go through them in an orderly fashion. There is no objection to 283 A through C, is that right?

(No response.)

And there is no objection to 284-A and -B?

(No response.)

They will be received in evidence.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 283-A, -B, -C; and 284-A and -B, were received in evidence.)

Hearing Examiner Kolb: Exhibit 285, is there objection?

(No response.)

It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 285 was received in evidence.)

Hearing Examiner Kolb: Exhibit 286-A and B?

(No response.)

It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 286-A, and -B for identification was received in evidence.)

Hearing Examiner Kolb: 287?

(No response.)

It will be received in evidence.

609 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 287 for identification, was received in evidence.)

Hearing Examiner Kolb: Exhibit 288, do you have objection to that?

Mr. Thompson: No objection to 288.

Hearing Examiner Kolb: It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBITS 288-A, -B, -C, -D for identification was received in evidence.)

Hearing Examiner Kolb: Exhibit 289?

Mr. Thompson: Yes, sir, I have an objection to that. It is simply based on the ground that in that document it is apparent from the face of it that Mr. Hinderscheid attempted to state not the policy of the Lee Company, which of course he could do, but the policy of the Atlantic Refining and Goodyear Company.

Hearing Examiner Kolb: May I see the document?

Mr. Thompson: (Reading to the Examiner.)

Mr. Kelaher: Your Honor, Commission's Exhibit 289 is a follow-up to Commission's Exhibit 288 A through D, which is already in evidence.

Hearing Examiner Kolb: Have you completed your objection, Mr. Thompson?

610 Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: It will be overruled, and the document will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 289 for identification, was received in evidence.)

Hearing Examiner Kolb: Exhibits 290, 291, and 292 it is agreed that we hold them until tomorrow.

How about 293?

Mr. Thompson: I have no objection. And may I comment here, Mr. Kelaher, the reply to that letter I have here and we might save time by putting that in as a Commission exhibit, if you like, or otherwise we will put it in later.

Hearing Examiner Kolb: Let's hold that until tomorrow morning.

Mr. Correa: Mr. Examiner, I have an objection to 293-A and B, because it is apparent on the face of 293-B that both exhibits refer to an incident which has nothing to do with the respondent Goodyear; it involved apparently something arising in the area of the Firestone.

Hearing Examiner Kolb: May I see that?

Mr. Correa: (Handing to Examiner.)

Hearing Examiner Kolb: Your objection is to the attachment?

Mr. Correa: To both, because the other doesn't have any point except with the attachment, and the whole 611 incident around which both evolved makes it clear it had nothing to do with the respondent Goodyear.

Hearing Examiner Kolb: You have no objection, Mr. Thompson?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: The document will be received in evidence as to Atlantic and received subject to motion to strike on the part of Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 293-A and -B for identification, was received in evidence.)

Hearing Examiner Kolb: The hearing will adjourn, to reconvene in this court room tomorrow morning. I understand that Court Room number 7 is not available.

613 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, Mr. Matthews is being recalled for cross-examination.

JAMES MATTHEWS resumed the stand and testified further as follows:

Cross-Examination by Mr. Thompson.

Q. Mr. Matthews, I am going to show you one of the Commission's exhibits in this case, identified as CX-150. This isn't the original exhibit but I won't bother to get it because I have a photostat.

Mr. Kelaher, I am going to use a photostat instead of the one that is in evidence, if I may, of this letter.

Mr. Kelaher: Certainly.

By Mr. Thompson:

Q. And I will ask you whether you recall receiving a letter addressed to you in the form of Exhibit CX-150 dated March 1, 1951, signed by Dwight T. Colley, Vice President of Atlantic Refining? (Handing document to the witness.)

A. So?

Mr. Kelaher: I believe—

Mr. Thompson: There is a question.

614 Mr. Kelaher: Would you state the question; I don't know whether he knows there is a question pending.

Mr. Thompson: Let's have it read.

(The reporter read the following question:

"Question: I will ask you whether you recall receiving a letter addressed to you in the form of Exhibit CX-150 dated March 1, 1951, signed by Dwight T. Colley, Vice President of Atlantic Refining?")

The Witness: I do.

By Mr. Thompson:

Q. I am going to now show you Commission's Exhibit CX-206, dated August 28, 1952, also signed by Mr. Colley, called "A Restatement of Atlantic's TBA Policy," and ask

you whether you recall receiving a letter in that form addressed to you? (Handing document to the witness.)

A. I do.

Q. And I now show you Commission's Exhibit CX-207 addressed by Mr. J. O. Estlow on June 24, 1955, to all Atlantic dealers and ask you whether you recall receiving that letter? (Handing document to the witness.)

Mr. Kelaher: I beg your pardon, is that an exhibit and what is the number on that?

Hearing Examiner Kolb: 207

A. That one I don't recall.

615 By Mr. Thompson:

Q. I am going to ask you about a fourth communication sent to all Atlantic dealers and show you Exhibit 282, I guess, Mr. Kelaher, that is CX-282, one of the exhibits you offered yesterday?

Mr. Kelaher: Yes, sir.

By Mr. Thompson:

Q. Signed by Mr. Hinderschied, of the Lee Tire & Rubber Company dated February 20, 1951, and ask you whether you as a former Lee dealer recall receiving that letter? (Handing document to the witness.)

A. I don't recall receiving that letter or the post card attached.

Q. If you did receive the letter you did not send back the post card attached?

Mr. Kelaher: Objection, your Honor, he doesn't recall receiving the letter.

Hearing Examiner Kolb: The objection is overruled; cross-examination.

A. I don't recall receiving the letter.

By Mr. Thompson:

Q. Then my question was if you did receive the letter you didn't send back the post card?

A. I didn't answer that part.

Q. What is the answer?

616 A. Well, if I didn't recall receiving the letter naturally I wouldn't send back the card.

Q. In any event to the best of your recollection you did not send back a card to Lee saying that you wanted to deal in Lee tires?

A. I didn't receive the letter.

Q. You say you did not receive the letter?

A. To the best of my knowledge I didn't receive the letter.

Q. You were a fairly regular attendant at Atlantic dealer meetings, weren't you?

A. Correct.

Q. You referred to one yesterday held in the spring of 1951 at which you were told that the Goodyear TBA program was for you to accept or reject?

A. Correct.

Q. On how many subsequent occasions were similar statements made at dealer meetings? Quite frequently, were they not?

A. That's the only one in particular that I recall.

Q. And that was in the early part of '51?

A. Right.

Q. Well, you testified yesterday to another one which you said was in '52 and as I recall your testimony you said that shortly after that meeting in spite of those assertions by the Atlantic people, Mr. Way and Mr. Arnholt came out and told you the contrary. Was that a correct statement yesterday?

617 A. It was.

Q. So, there was more than one meeting at which you were told—

A. I said I did not recall at the present time.

Q. Do you now recall both of them?

Q. A. The meeting at the beginning when we were told about this new TBA program; we were told at that time and we were told once at a later date.

Q. And that was in '52 or '53?

A. I would say that it was either late in '52 or early in '53. I can't be positively sure which.

Q. Fall of '52, perhaps?

A. I can't be sure.

Q. Called a "Football meeting?"

A. I can't be sure.

Q. Are you sure you went to that?

A. I went to all of them except one meeting that I remember missing.

Q. At every such meeting were not similar statements about no forcing made by the Atlantic representatives?

A. I don't recall it. I wouldn't say at every meeting; no.

Q. But you did receive two letters to that effect from Mr. Colley that you have already testified to?

A. I received two letters, the third letter I don't recall receiving.

618 Q. Now, after Atlantic adopted the Goodyear plan were you asked by Lee to sign an associate dealer franchise for Lee tires?

A. It's possible but I don't recall it.

Q. Did you sign such a franchise?

A. Well, if I don't recall it, I don't recall signing it.

Q. After March of '51 from whom did you buy Lee tires?

A. From their branch in Bryn Mawr.

Q. The branch in Bryn Mawr?

A. Yes.

Q. At that time you were in Yeadon?

A. Yes, sir.

Q. With whom in the Bryn Mawr branch did you deal?

A. Mr. Deemer.

Q. Did Mr. Way and Mr. Arnholt tell you some time in 1953 to discontinue selling Lee tires?

A. Either later in the fall of '52 or early in the spring of '53.

Q. Now, precisely who said what?

A. Mr. Way told me to get rid of the Lee tires or else they would get rid of me, to get them off of the racks and get them out of the station.

Q. And that was the entire conversation?

A. That was the heart of the conversation.

Q. Was this at the time Mr. Way suggested you
619 sign a mutual cancellation of your lease?

A. That was about two weeks prior to the time.

Q. Now, you say that was part of the conversation, was that the entire conversation and where was it held, was it held at your station?

A. Yes, sir.

Q. What was the entire conversation?

A. That's the main part of the conversation I remember.

Q. You don't now recall any other part of the conversation?

A. Nothing definite; no.

Q. Did you report to Lee what you say Mr. Way said?

A. I did not.

Q. Did you report to Mr. Colley?

A. I did not.

Q. Mr. Estlow?

A. No, sir.

Q. Well—

A. I didn't know anything about this report letter that you are talking about or I most certainly would have. That's the third letter you showed me there.

Q. You are now referring to a letter which was written in 1955 which, of course, you didn't know anything about?

A. No, I didn't know anything about.

Q. This was in 1953, did you say?

A. That's what I say, I don't know anything about that.

620 Q. But you had received two prior letters from Mr. Colley at the time of this alleged conversation with Mr. Way, had you not?

A. I don't know—I didn't look at the dates on the letters.

Q. You can refresh your recollection by looking at them again. One was in '52, one was in '51. (Showing documents to the witness.)

A. That would be before then, sure.

Q. Yes. So that you had already received those letters from Mr. Colley when Mr. Way is supposed to have said these things to you, correct?

A. Mr. Way did say them; there's no supposition about it.

Q. Well, we'll find that out later.

Now, you said something about a Lee sign having been taken down at your premises when you were away?

A. A sign from the windows were taken out, the decals.

Q. And how about the Lee tire sign on the station, was that taken down?

A. There wasn't any Lee tire sign at my Yeadon station, there was a Lee tire sign at the Darby station.

Q. And when you moved in 1949 from Darby to Yeadon there was no Lee sign on your station?

A. There was a Lee sign in Darby, yes, in '49, but there was no Lee sign in Yeadon.

Q. Was there a Lee decal?

621 A. Yes.

Q. I beg your pardon?

A. Yes.

Q. What is a decal?

A. It's a sign that's put on the inside of glass.

Q. Just pasted on the window?

A. That's right.

Q. And you say that was taken down?

A. That's right.

Q. At your Yeadon station?

A. Yes.

Q. Do you know by whom?

A. No, I wasn't there when it was taken down.

Q. You weren't there a lot of the time in those days, were you, Mr. Matthews?

A. I don't think that enters into it at all.

Q. We'll see whether it does. I would like you to answer my question.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

By Mr. Thompson:

Q. Is that true or false?

A. I don't have to answer—

Mr. Kelaher: Is what, your Honor?

Hearing Examiner Kolb: What is the question?

622 Mr. Thompson: The question is, "You were not at the station a lot of the time during those days, were you?"

The Witness: I wasn't at the station twenty-four hours. I worked a shift.

By Mr. Thompson:

Q. In fact, you were away from the station a great deal, weren't you?

There's a question.

A. Describe what you mean by "a great deal".

Q. I'm asking the questions, Mr. Matthews.

A. All right, make yourself more specific then.

Q. You can take your orders from the Examiner.

Hearing Examiner Kolb: Answer the questions as best you can, Mr. Matthews.

The Witness: I don't understand what he means by "a great deal," does he mean months, a year, or week? I took a vacation which I think everyone is entitled to.

Hearing Examiner Kolb: Answer the question. Were you there except for the vacation?

Mr. Kelaher: Your Honor, I think he's entitled to have a more specific question. A great deal of time means a lot of things to a lot of people. I think it should be specified with respect to hours, days, months, etc.

Hearing Examiner Kolb: Ask another question.

Mr. Thompson: I'll come back to it if I may.

623 By Mr. Thompson:

Q. About this Lee decal, did you tell the Lee distributor in Bryn Mawr that the decal had been taken down?

A. I did not.

Q. Why not?

A. Pardon?

Q. Why not?

A. I didn't feel it was necessary.

Q. Did you ask for another one?

A. I did not.

Q. Why not?

A. I had them in stock.

Q. You had them in stock?

A. I did.

Q. Did you testify yesterday that it wasn't put back again because you only had one?

A. No, I didn't.

Q. Well, your testimony will speak for itself.

A. I said I didn't put it back, but I didn't say that I only had one.

Q. Why didn't you put it back?

Mr. Kelaher: Objection, your Honor, to—he stated it's a fact he didn't put it back.

Mr. Thompson: I said "Why didn't you put it back?"

The Witness: I didn't get to it until they come back 624 and put more Goodyear decals up.

By Mr. Thompson:

Q. Now, you said that about two weeks after Mr. Way told you to get the Lee tires out of your station he came out with a proposed mutual cancellation of your lease, is that correct?

A. I would assume that it was approximately that time. After all, I didn't write it down and you're talking about something that happened five years ago.

Q. Now, that would make that incident the latter part of '52 or early part of '53, would it not?

A. It was the incident because my lease expired in May or June of '53, thereabouts, and it was, I would roughly guess, four to six months before my lease was due to expire.

Q. That would place it in the early part of '53?

A. Somewhere thereabouts.

Q. Now, you had been promoted from Darby to Yeadon by Atlantic, had you not?

A. I wouldn't call it a promotion.

Mr. Kelaher: Objection—all right.

By Mr. Thompson:

Q. Well, you had been moved to a more desirable station from Darby to Yeadon, hadn't you?

A. I wouldn't say it was.

Q. You hadn't been doing very well at Yeadon up to the early part of '53, had you?

A. I wouldn't say that.

625 Q. Gasoline volumes falling off?

A. Due to lack of support from the company and price condition; yes, sir.

Q. What do you mean by "lack of support from the company"?

A. They set up distress areas and I was left out.

Q. By "distress areas" you mean assistance to dealers on price?

A. Correct.

Q. Was that the reason your volume was falling off or was it because you were away from the station a great deal of the time?

A. I would say that it was due to distress areas being set up around me and I was left out.

Q. You could, of course, say that but I have some other questions I want to ask you on that score.

At that time were you not involved in a trucking business?

A. To some extent, but I had drivers, I wasn't doing my own driving.

Q. Didn't you operate a fleet of trucks?

A. I operated one and for a short time two, if you would call that a fleet.

Q. And you drove one of them yourself at night, didn't you?

A. No, I didn't.

Q. Not at all?

626 A. There was occasions when I drove a truck, but I wasn't a steady truck driver; no.

Q. When Mr. Way come out to see you and suggested a cancellation of your lease, did he not say to you that your outside interests were interfering with the operation of the station?

A. He did not.

Q. Did he say to you you were spending so much time on your trucking business that you were not adequately handling this station?

A. He did not.

Q. Did he say to you that one of your problems was that you drove a truck at night and were unable to be at the station the next day?

A. He did not.

Q. Did he ask you to discontinue the trucking business?

A. He did not.

Q. He made no mention of the trucking situation at all?

A. No, sir; not to my recollection he didn't.

Q. And on that occasion you said yesterday that he talked to you for three hours?

A. Correct.

Q. And you have summed that three hour conversation up—

A. Strictly an argument whether or not I would sign a mutual.

Q. And you argued about that for three hours?

A. Correct.

627 Q. And there was no reference to your outside activities and outside interests?

A. Not to my recollection; no.

Q. At that conversation did Mr. Way refer to the fact that you were in the Christmas tree business?

Mr. Kelaher: Which business is this?

Mr. Thompson: This is just another one; I'm coming to some more.

Mr. Kelaher: I just didn't understand you.

Mr. Thompson: Be patient, Mr. Kelaher.

Mr. Kelaher: I didn't understand you.

Mr. Thompson: Christmas trees.

Mr. Kelaher: Thank you.

By Mr. Thompson:

Q. Was that discussed?

A. No, sir. Furthermore, there was never a Christmas tree sold from the station; I never had a Christmas tree at that time to market, and as far as owning a farm I do own a farm but I have never done two hours work on the farm myself. So, what the Christmas tree business has to do with it is nothing.

Q. It diverted your attention from the station; you spent a great deal of time up there, did you not?

A. I did not. I went home to see my people once in a while; they live in the neighborhood. Yes.

Q. And shortly after—

628 A. Which I certainly think I'm entitled to.

Q. During this conversation with Mr. Way did he ask you to accept his counsel and advice about how to run a station profitably?

A. Yes, if I would go one hundred percent Atlantic on TBA and so forth.

Q. That is scarcely an answer to my question and I move that the response be stricken.

A. I answered to the best of my ability.

Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Thompson:

Q. Did he ask you to cooperate with him in trying to make this a top Atlantic station?

A. I told him if he would let me go to the end of my lease he could do as he saw fit.

Q. Did the station's volume and performance after this discussion with Mr. Way begin to improve?

A. I would not say yes or no volumewise, I know as far as purchasewise it did.

Q. Didn't you begin to spend more of your time there?

A. No, I began to spend more of my money for Atlantic TBA.

Q. Did you begin to spend more of your time there?

A. No.

Q. When your lease came up for renewal in 1954 629 did you ask for a Media station?

A. When my lease came up in '54, I don't understand the question at all.

Q. Well, I'll try to make it as simple as I can for your benefit.

Did you ask for the Media station?

A. I didn't understand the first part in regard to lease. What did you say about when my lease came up?

Q. I'm asking the questions. Did you ask for the Media station?

Mr. Kelaher: Your Honor, he asked the prior question with the word "leasing" in it.

Hearing Examiner Kolb: Read the question.

Mr. Thompson: My question is "Did you ask for the Media station?"

Mr. Kelaher: Get the original question, please.

Mr. Thompson: Mr. Examiner, I don't like this witness' attitude.

Mr. Kelaher: Your Honor, the witness is attempting to answer questions. When they are vague and general—

Mr. Thompson: It's a perfectly simple question. I asked him whether he requested a Media station?

The Witness: Well, what happened to this question you asked concerning a lease? That's what I want to know.

Hearing Examiner Kolb: He has passed that, Mr. 630 Witness; just answer this question.

The Witness: What happened to that question, your Honor?

Hearing Examiner Kolb: It's never been answered.

The Witness: Did I ask for the Media station; yes.

By Mr. Thompson:

Q. Do you know who recommended you for it?

A. Do I know?

Q. Yes.

A. Who?

Q. Yes.

A. Mr. Parris.

Q. Who else?

A. Mr. Hayes.

Q. Did you know Tom Hayes before you went to Media?

A. I did not.

Mr. Kelaher: You say you did not know him?

The Witness: I did not.

By Mr. Thompson:

Q. Tom Hayes interviewed you before you took the Media station?

A. Correct.

Q. You and he got to be close friends, did you not?

A. Just what do you mean by "close friends"? In business—

Q. Any way you want to answer it, Mr. Matthews.
631 I don't much care.

Mr. Kelaher: What was the question, please?

(The reporter read the question as follows: "Question: You and he got to be close friends, did you not?")

The Witness: Could you define what you mean by "close friends"?

By Mr. Thompson:

Q. No.

A. You mean in a business way or social way?

Q. You just answer the question the best you can and then I'll keep on asking other questions until I get the answer that I want.

Mr. Examiner, may we note on the record that it's taken this witness, by my stop-watch, one minute—

Hearing Examiner Kolb: The witness has stated, he didn't understand the question. Ask another one.

By Mr. Thompson:

Q. I'll ask it this way. Were you and Mr. Tom Hayes close friends?

Hearing Examiner Kolb: That was the same question you asked before.

Mr. Thompson: Yes, sir.

The Witness: To what extent? Do you mean did we play cards together, did we—I don't know what you
632 mean. Whether you mean just as a dealer-salesman relationship or what?

Q. When you were at the Media station did Mr. Hayes have a discussion with you about Auto-Lite batteries?

A. He did.

Q. Is Mr. Hayes in the court room?

A. He is.

Q. Mr. Tom Hayes, would you stand up, please.

(A gentleman in the back of the court room stood up.)

Q. Is the gentleman who is standing up the person you are talking about?

A. Correct.

Q. It was no one else? It was this gentleman?

A. That's right; and Mr. Parris was with him.

Q. And he was with him at the time of the instance you are going to talk about.

Thank you, Mr. Hayes.

Now, precisely what was said and by whom?

A. Mr. Hayes and Mr. Parris came into the station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne

for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and 633 didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—

Q. Not "they," what two people talking at once?

A. Not to put them on display.

Q. Who said that?

Mr. Kelaher: Your Honor, I think the witness should be permitted to answer a question fully and not be interrupted when he is—

Hearing Examiner Kolb: He's giving a conversation, is he not?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Proceed with your conversation.

The Witness: So, they told me to put them out of sight until they got rid of them.

By Mr. Thompson:

Q. That's not my question. Who said that? Every time you answer I want to know what individual said what.

Hearing Examiner Kolb: Let the witness answer the question and then go back and find out if you want to.

By Mr. Thompson:

Q. May we have the question?

(The reporter read the following question and answer:

633 A "Question: Now, precisely what was said and by whom?

"Answer: Mr. Hayes and Mr. Parris came into the

station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—

“Question: Not ‘they,’ what two people talking at once?”)

Mr. Kelaher: From there, he should be permitted to answer that question fully.

Mr. Thompson: Who said that?

Hearing Examiner Kolb: He hadn't finished answering the proceeding question.

Mr. Thompson: I thought he had.

Hearing Examiner Kolb: Had you finished your answer?

The Witness: No, sir.

Hearing Examiner: All right, finish your answer.

634 The Witness: How far had I gone when I was interrupted?

(The reporter read the following answer:

“Answer: Mr. Hayes and Mr. Parris came into the station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want

to see any more of them in the station again. And not to put them—")

The Witness: So, I put them in the boiler room. They told me to put them out of sight, which I did, until I had gotten rid of them all.

But both Mr. Hayes and Mr. Parris referred to them as merchandise that should not be there.

By Mr. Thompson:

Q. Have you now finished your answer?

A. Yes, sir.

Q. Who said that?

A. I said Mr. Hayes and Mr. Parris both referred to them as merchandise which should not be there.

635 Q. But the conversation about the Auto-Lite batteries you referred to continuously as statements made by "them." Who? Which of the two made the statements.

Mr. Dias: We can't hear counsel over here, your Honor, I'm sorry.

The Witness: I said both of them; Mr. Hayes and Mr. Parris.

By Mr. Thompson:

Q. Did they say it in chorus together?

A. No, but I don't remember which one said it first.

Q. Both of them said it?

A. Yes, sir.

Q. Each of them, separately said it?

Mr. Kelaher: Your Honor, he's answered the question in every conceivable way.

Hearing Examiner Kolb: All right.

By Mr. Thompson:

Q. Did each of them separately say it?

A. I said I didn't know which one said it first.

Q. That means both of them said it at one time or another?

A. Correct.

Q. That was the only incident relating to TBA which you testified to yesterday, was it not, during your tenancy at the Media station?

A. I mentioned a motor oil additive which Mr. 636 Hayes questioned but it had been purchased from Mr. Parris, he found out later, Mr. Hayes did.

Q. Was there any other incident during the years you were at Media when Mr. Hayes complained about non-Goodyear TBA at the station?

A. I don't just recall it at the very minute. You have it on the record there.

Q. But you have stated everything that you recollect along those lines?

A. Just at the minute I do. After all, a person's mind is ninety percent subconscious, the other ten conscious.

Mr. Kelaher: Would you read the answer, please?

(The reporter read the last answer.)

By Mr. Thompson:

Q. The Media station is located on the Baltimore Pike, is it not?

A. That's right.

Q. And the Baltimore Pike is being widened?

A. That's right.

Q. Has the widening started yet?

A. It has.

Q. Has that interfered with that station?

A. Not according to the new dealer it hasn't to any extent.

Q. Was the widening started while you were still there?

637 Mr. Kelaher: Your Honor, off the record a minute, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: May I have the last question read?

(The reporter read the pending question.)

The Witness: No, not at the point of the station it wasn't.

By Mr. Thompson:

Q. Had your gallonage dropped off severely due to the improvements on the Baltimore Pike before you left the station?

A. No, I wouldn't say so.

Q. Was the widening of Baltimore Pike one of the reasons why you wanted to step out of this station?

A. No.

Q. It had nothing to do with it?

A. No.

Q. Now, at the time you stepped out you had a three year lease from Atlantic, of course, didn't you?

A. Correct.

Q. And you asked Atlantic if they would be willing to cancel it?

A. I did.

Q. And you had no difficulty in getting Atlantic to 638 cancel it, did you?

A. No extreme difficulty, no.

Mr. Thompson: I think I shall now turn you over to the tender mercies of former District Attorney Mr. Mathias Correa of New York.

Mr. Correa: Off the record.

(Discussion off the record.)

By Mr. Correa:

Q. On the record I just have a few points I would like to clear up.

Now, sir, you said that you were at a meeting of Atlantic dealers at which there was discussion of an investigation. Do you remember giving that testimony?

Mr. Kelaher; Your Honor, I think—if I understand your question, I don't think there was any such testimony.

By Mr. Correa:

Q. Let me ask you this, sir: Do you remember being asked on your direct examination and making the following answer. This is at page 550 and 551 of the record:

“Question: I'm referring now to a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation was mentioned. Do you recall any such meeting?

“Answer: I remember one meeting we had when—but I can't say when it was exactly, when we were told
639 that there was an investigation going on and that we were free to buy where we saw fit and so on and so forth; and that's what we were told at the meeting, but then after the meeting and the salesman came around and talked to us individually we were told something else.”

Do you remember that, sir?

A. Yes, sir.

Q. Now, sir, do you recall the date of that meeting?

A. No, sir.

Q. Do you recall the approximate date of it?

A. No, I would be guessing if I tried to establish about when it was.

Q. Do you recall the year in which it took place?

A. No, not definitely I don't. I would have to be guessing to—I could come close—

Q. (Interposing.) We don't want you to guess, we want your best recollection.

A. I could come close but I don't have it definitely established in my mind.

Q. You say you can tell us about when?

A. I could guess, I don't have anything established in my mind.

Q. You have no recollection?

A. No.

Q. All right. Now, you have said that after the 640 meeting the salesman came around and talked to you individually and you say "we were told something else." To whom does "we" refer to in your answer, sir?

A. Dealers in general.

Q. Well, does it refer to you in particular?

A. Yes.

Q. And to what other dealers to your knowledge, if you can?

A. Mr. Hill in Darby. George Hill.

Q. Mr. Hill in Darby. Anyone else?

A. That's the only one that I recall at the moment.

Q. So that when you said—"were told something else" in this answer at page 551 of the record you meant dealers in general, i.e. yourself and Mr. Hill of Darby, is that correct?

A. I meant myself and I knew of Mr. Hill in Darby at that time.

Q. Well, did you mean anybody else, sir, and if so, please name them.

A. I don't recollect anybody in particular at the moment.

Q. Do you recollect anybody in general?

A. Not at the moment.

Q. Now, sir, you recall that you were asked by Mr. Kelaher the following question and answer—on page 552 of the record:

"Question: Now, after the meeting you have refer-

641 ence to you stated Atlantic salesman came in and told you something else, is that right?

"Answer: That's correct.

"Question: Now, who was the Atlantic salesman who came into your place?

"Answer: Mr. Way.

"Question: What did Mr. Way tell you?"

And then I interposed and said: "May we have the time fixed."

"By Mr. Kelaher:

"Question: Yes, we are trying to.

"Answer: Yes, it was early in 1953."

Do you remember making those answers in response to those questions, sir?

A. Yes.

Q. Now, sir, does that refresh your recollection as to the date of the meeting at which you were told there was an investigation going on?

A. No, not exactly.

Q. Well, does it refresh your recollection at least to the effect that the meeting was some time prior to early in 1953.

A. Well, this thing was brought up at more than one meeting.

Q. Please, I'd like to stay with the meeting you talked about at page 551 of the record now, if I may, sir.

A. I can't definitely say for sure now.

642 Q. And those answers I last read you do not refresh your recollection as to whether or not that meeting was some time prior to early 1953?

A. Yes, but this thing of—

Q. Could you answer my question?

Mr. Kelaher: Let him answer the question.

The Witness: Wait a minute—

Mr. Correa: Please, Mr. Witness, I'm not taking any directions from you.

Hearing Examiner Kolb: The witness is trying to answer your question.

The Witness: You're not trying to submit any question or answer, you confuse me.

Mr. Correa: Would you instruct the witness that he is not to make remarks to counsel that this is the matter of your Honor's controlling the court room and not the witness. I ask for instruction, if your Honor please.

Hearing Examiner Kolb: Read the question.

(The reporter read the following question:

"Question: And those answers I last read you do not refresh your recollection as to whether or not that meeting was some time prior to early 1953?"

Hearing Examiner Kolb: Can you answer that question, Mr. Witness?

The Witness: Pardon?

643 Hearing Examiner Kolb: Does that refresh your recollection as to that having occurred prior to early 1953?

The Witness: No, because this TBA subject was mentioned at so many meetings—

Hearing Examiner Kolb: Well, it would have to be prior to '53, would it not?

The Witness: Well, there were times when the TBA was mentioned prior to '53, but what happened at which meeting I just can't definitely say.

Hearing Examiner Kolb: The question was whether it was discussed prior to that time. Is that correct, Mr. Correa?

Mr. Correa: Yes. Well, if your Honor please, the question was as to his recollection of when a meeting at which an investigation was mentioned took place. Now, he said that at the meeting he was told one thing and thereafter

salesmen came around and told him something else, and he says when asked when the salesman came around and told him something else that was early 1953.

Now, I asked him does that refresh your recollection—

The Witness: (Interposing.) That date is correct.

Mr. Correa: (Continuing.) —of when the meeting took place. That's all.

Hearing Examiner Kolb: We could spend all morning on this, Mr. Correa, but where are we going to be after you get finished with it?

644 Mr. Correa: If your Honor please, I submit that is not my fault. That is the witness. I don't think these questions are particularly complicated or difficult and I don't see why we have had to spend this much time on it.

Hearing Examiner Kolb: You have spent considerable time on it. I was wondering why you were spending so much time on it. That's up to you, you are making the record.

By Mr. Correa:

Q. Well now, sir, coming back to this meeting—

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. At which you were told there was an investigation going on. Were you told what kind of an investigation or by whom?

A. I don't recall.

Q. Well, were you told whether or not there was a Government investigation?

The answer is "no"?

A. I said I don't recall at the moment. No.

Q. You will have to answer audibly because the reporter doesn't get it otherwise.

Now, you said, sir, that in 1953, in March, there were two men came into your place and conducted an investigation. Do you remember that answer?

A. Yes, sir.

Q. Now, sir, was that before or after the conversation with Mr. Way concerning a mutual consent cancellation of lease which you have testified about as having taken place early in 1953?

A. That was after I had the discussion with Mr. Way.

Q. Now, do you know who these two men who came into your place and conducted an investigation were?

A. No, at the present time I don't. I know that they identified themselves at the time.

Q. As what, do you know?

A. I can't be sure.

Q. What is your best recollection?

A. Whether it was FBI or Federal Trade Commission, but they had proper credentials for an investigation.

Q. You said they conducted an investigation, what did they do?

A. They asked me questions.

Q. And what questions did they ask you and what answers did you give?

A. I don't recall at the moment. It was all recorded at the time.

Q. What was the subject matter of their questions, sir, if you can't recall the questions specifically?

A. I wouldn't want to guess right at the moment.

646 Q. I don't want you to guess, but haven't you any recollection?

A. No, I wouldn't guess if I had.

Q. You have no recollection of the subject matter of their questions?

A. Not right at the moment. No, sir.

Q. Was it dealing in narcotics?

Mr. Kelaher: Objection, your Honor. I think that is a frivolous question.

Mr. Correa: Well, I submit—

Hearing Examiner Kolb: Objection overruled.

The Witness: What was the question.

Mr. Correa: Read the question, please..

(The reporter read the pending question.)

The Witness: Well, if you must be radical, I would have to say no.

By Mr. Correa:

Q. Well, you recall it was not that?

A. I do.

Q. Do you have any recollection of what it was?

A. Not at the moment, sir.

Q. Now, do you recall whether or not you discussed with these men who came into your place of business in March of 1953 the incident which you had related to us of your conversation with Mr. Way concerning the mutual consent to cancellation?

647 A. No, I don't recall.

Q. You have no recollection one way or the other on that?

A. No, sir.

Q. Did you discuss with these men who came into your place in March of 1953 the incident which you told us in your direct testimony occurred when advertising was placed in your place of business and subsequently removed by you?

A. I don't recall whether I discussed that point with them or not.

Q. Did they ask you questions on subjects related to either of those things?

A. I can't say whether they did or didn't.

Q. You have no recollection about that?

A. Not at the moment. No, sir.

Q. Now, sir, when this advertising was placed in your station you said you were not there, is that right?

A. That's correct.

Q. Who was?

A. The gentleman in charge of the place when I wasn't there. I wasn't out of town, I wasn't—

Q. I just asked you who was. We'll get on much faster if you will answer my questions.

A. I said the gentleman who was in charge—

Q. What was his name, if it's not a secret.

A. I don't recall at the moment.

648 Q. You don't remember his name?

A. No, sir.

Q. Now, don't you know, sir, didn't he tell you that he signed a receipt for that advertising saying that it had been installed to his satisfaction?

A. No, I wasn't—in fact, I was only gone a short time, I'd gone out for something and was working at the time and—

Q. (Interposing.) The question, if I may refresh your recollection, was don't you know?

A. That he signed, no; no, I didn't know that he signed.

Q. He didn't tell you that?

A. No, if he did I don't have any recollection of it.

Q. Now, sir, after this occasion in March of 1953 of which apparently you have no recollection, when was the next time you talked or corresponded with any Government investigators about the subject of your experience as an Atlantic station operator?

A. A week ago yesterday, by telephone.

Q. Where did that take place, sir?

A. I don't know exactly where the gentleman was when he called me.

Q. He called you?

A. That's correct.

Q. Now, sir, prior to your appearance here, have you discussed your testimony with anyone?

649 A. I have not, sir.

Mr. Correa: I have no further questions.

Mr. Kelaher: May we have a few minutes, your Honor?

Hearing Examiner Kolb: We will recess for five minutes. (Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Correa: If your Honor please, there is one further question I neglected to ask. May I have your Honor's leave to put it to the witness?

Hearing Examiner Kolb: Yes.

By Mr. Correa:

Q. Mr. Witness, on the occasion in March of 1953 when two Federal agents came to your place and in your words conducted an investigation, did you, sir, in connection therewith sign any statement in writing?

A. I did.

Q. You did?

A. Yes, sir.

Mr. Correa: I call for its production.

Mr. Kelaher: I have that right here.

Mr. Correa: Thank you.

May we have a moment, if your Honor please?

650 Mr. Correa: No further questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Witness, I would like to ask you if this is the statement you signed and please state the date. (Handing document to the witness.)

A. That's correct. 3/3/53. (Document is returned to counsel.)

Mr. Kelaher: Mr. Examiner, I now ask that this statement be marked for identification as Commission Exhibit 294-A and B—two pages.

(The document referred to was marked Commission's Exhibit 294-A and B for identification.)

Mr. Kelaher: Mr. Examiner, Commission Exhibit for Identification 294-A and -B is a statement signed by Mr. James B. Matthews on March 3, 1953, in the presence of Attorney Examiner L. E. Janson, an Attorney Examiner of the Federal Trade Commission in response to questions concerning his service stations operation as an Atlantic Service Station lessee dealer located at Church Lane and Bailey Road, Yeadon, Pennsylvania.

I now offer Commission Exhibit 294-A and 294-B into evidence.

Mr. Correa: No objection.

Mr. Ballard: No objection.

651 Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 294-A and -B.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 294-A and 294-B, were received in evidence.)

By Mr. Kelaher:

Q. Mr. Matthews, when Atlantic changed over to the Goodyear TBA line, did they consult you or ask your preference with respect to their change-over?

A. No.

Q. Mr. Matthews, during your operation of the three service stations did you always pay your rent in full and promptly?

A. Did I always pay my rent?

Q. Did you always pay your rent?

A. My rental up until December of this year—or this past year—was paid on a gallonage basis and it was changed

to a commission basis December 1, '56, and at that time we were—I left a deposit with the company of \$650 in advance which is at, the company still have that at the present time because I haven't made settlement for the last month and the first 7 days of the next month.

Q. Up until that time you had—

A. It was always paid on a gallonage basis.

Q. And you paid it promptly, is that correct?

A. Well, within a few days—

652 Q. Within a specified time?

A. That's correct. Maybe I was late with a check once in a while for gasoline, but not any weeks or months or anything like that; just a matter of a couple of days.

Q. Did you ever receive a warning letter from Atlantic with respect to the cleanliness of your station during any of the three—in any of the three stations which you operated?

A. I can't ever say that I received anything in writing, I was told on a couple occasions that I should keep it cleaner, which we did in cooperation with the company.

Q. And did you normally keep a clean station?

A. Comparatively.

Q. And did you employ any personnel in your stations?

A. Yes, sir.

Q. And about how many hours did you keep the three stations open?

A. In Darby I operated 24 hours; in Yeadon I operated 17 hours—7 to 12—7:00 a. m. to 12:00 midnight; and in Media I operated 24 hours.

Q. And during all of the hours you have specified was either you or an employee of yours present at the station?

A. Yes, sir.

Q. Yesterday you referred to a Mr. Arnholt. Do you know what Mr. Arnholt's title was with Atlantic?

A. He was in a supervising capacity.

653 Q. And he was in charge of TBA in your area, is that correct? Sales supervisor.

Mr. Ballard: I object unless the witness knows the answer to this question.

Hearing Examiner Koth: Does the witness know?

The Witness: He was in the sales department in the supervising capacity.

By Mr. Kelaher:

Q. Was he in charge of the various Atlantic salesmen such as Atlantic salesman Hayes and Hoffman who came into your station?

A. To the best of my knowledge, yes; he was their superior.

Q. And was he Atlantic salesman's Way's superior at that time?

A. Correct.

Mr. Kelaher: No further questions.

Mr. Correa: May I have the last exhibit?

(Document is handed to counsel for Goodyear.)

Recross Examination by Mr. Correa.

Q. Now, sir, remember I asked you whether on the occasion of this interview with Government investigators in March of 1953 you had said anything to them about the incident related on your direct examination when you
654 say Goodyear signs were put into your station in your absence and subsequently taken down by you. Do you remember that, you said you had no recollection.

A. Of it being mentioned at the time of the investigation?

Q. Yes.

A. I said I didn't have any definite recollection of it, no. But it was possible.

Q. I show you CX-294-A in evidence, and ask you does an examination of that exhibit refresh your recollection that you did not tell the Government investigators of any such incident? (Handing document to the witness.)

A. I don't see anything about it here.

Q. Well, my question, sir, is does it refresh your recollection that you did not tell the investigators of any such incident?

A. Well, I evidently didn't or they didn't write it down. I don't see it here.

Q. What is your recollection?

A. I still don't recall whether or not I did.

Q. Now, sir, you testified on direct examination that at this time your wish and desire was to sell Lee tires, is that correct?

A. That's correct.

Q. And that is the fact, is it?

A. That's right.

655 Q. And did you wish to sell Goodrich tires?

A. No, I never sold Goodrich tires. This question here that mentioned Goodrich tires the subject wasn't brought up by me.

Q. You hadn't given any thought to buying or to selling Goodrich tires prior to March of 1953?

A. Not to my recollection, no.

No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: Just a minute, your Honor, I think we do when they have completed with the document.

656 Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Matthews.

(Witness excused.)

Mr. Dias: Mr. Iacono, please.

ANIELLO L. IACONA was thereupon called as a witness for the Commission, and having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Please state your full name and home address.

A. Aniello L. Iacona, 1026 Woodland Avenue, Sharon Hill, Pennsylvania.

Q. Did you at one time operate an Atlantic station?

A. Yes.

Q. Can you give us the address of that station, please?

A. Well, it was the corner of Providence Road and South Avenue, Secane, Pennsylvania.

Q. When did you go into that station?

A. January 18, 1952.

Q. And did you change stations at all after that period, or were you in the same station throughout your term with Atlantic?

A. I stayed right there, one place.

Q. When did you leave the Atlantic station?

A. October, 1954, I think.

Q. Now, if you will, please, give us the periods—
657 you signed a lease when you went into the station, did you?

A. I think the first lease I signed was a six-month lease and then another six-month lease and then a year lease. Two six-month leases and a year's lease.

Q. Let's talk about the first lease. Do you recall the period involved there?

A. January to June.

Q. January to June of 1952?

A. Yes, and then June to December.

Q. June to December of 1952?

A. Yes.

Q. And the year's lease ran from when?

A. I think I had a lease in January—from October to October, I guess it was, when I went out.

Q. When, at any rate, you received your first year's lease, that was the latter part of 1952 or early 1953, is that correct?

A. I think it was, yes.

Q. And the four leases you received, that was another year's lease?

A. I think I was there two years, total, altogether, 1952 to 1954. I went out in October, I know that.

Q. Now referring to the time you took this station originally, was that a new station?

A. Brand new, I opened it up brand new.

Q. Did you carry TBA in that station?

658 A. Yes.

Q. And what brand TBA did you carry?

A. Mostly Goodyear TBA; the distributor was Ed Parris. I had all Goodyear tires and DuPont's chemicals, Goodyear tubes, batteries; when I first went in I got \$1340 worth of TBA from Ed Parris, the salesman wrote up the order for me when I was just getting in.

Q. Which salesman?

A. John Clark of Atlantic Refining Company.

Q. Do you recall when he wrote that order for you? Was it before you went into the station?

A. Before I went in, in December, I think. The station was supposed to be ready in November and bad weather held it up and I didn't go in until January.

Q. Was the TBA in the station when you moved in and started doing business?

A. It was sent there a couple of days before I opened up.

Q. Did you mention John Clark? You mentioned him as the salesman, didn't you?

A. That was the salesman at the time.

Q. How did you come to choose Goodyear TBA?

A. How did I come to choose it?

Q. Yes.

A. Well, I was getting into business and I was trying to get the station so he says when I got home the 659 station was mine if I wanted it, and I had to have \$5,000 to go into the station and there was so much rent to start, for the first six months, and he says "We have a distributor by the name of Ed Parris," which had his place of business in Sharon Hill at Clifton Avenue and Chester Pike at the time, and he says "You will get your TBA from him," tires, and tubes, and what-not. So he wrote up the order and I made out the check and paid him and Parris delivered the TBA, which was all Goodyear tires and tubes and the chemicals were DuPont's at the time.

Q. Did he ask you if that was what you wanted?

A. No, he didn't ask me.

Q. Did you carry anything other than Goodyear TBA thereafter?

A. Thereafter I did, yes. I had a problem there with adjustment on tires and I got kind of mad. They wouldn't make adjustment, so I started buying from Gail Derr & Shearer and started putting in Century tires and tubes, Delco batteries and I put in Packard battery cables. And I put in other chemicals like Barsleak.

Q. Can you tell us roughly when that was you started buying those products?

A. I guess around 1953.

Q. The early part or the latter part of 1953?

A. I guess it was in the spring of the year, because I just got a load of tires in, 30, 60, 90 days and they wouldn't make adjustment on the tires that a customer of mine 660 got and that is when I got mad and called Ed Parris and told him to take the tires back if he wouldn't make

an adjustment, and they refused to make the adjustment and I talked to the salesman from Gaul Derr & Shearer and he said Century tires were unconditionally guaranteed and that is what I wanted because I had to please my customers, and I had a couple of defective Century tires they made good. And it was, I guess in the spring of the year.

Q. That was after your second six-month lease?

A. I think it was the second or the year's lease.

Q. How do those leases operate? You went in and signed a lease for six months?

A. Yes, I mean they couldn't base your rent until the station got operating, that was their idea, to find out what the station would do and they would give you a year's lease. I think I had two six-month leases.

Q. After the expiration of the first six-month lease, did you get a new lease?

A. Six-month, yes.

Q. Did you actually get a lease or did they extend the first one?

A. You got another written lease that had to be signed.

Q. When the second one expired, did you get a new lease for a year?

A. Yes, a new lease for a year.

661 Q. During your first lease, when you carried—during the first six-month lease in your station, did you receive any complaints about the operation of your station?

A. No.

Q. During the course of your second six-month period, did you receive any?

A. It was during the year's lease when I started to get complaints.

Q. Can you tell us when this occurred, the first complaint?

A. When I started to handle outside merchandise, like Century tires and tubes, and outside chemicals.

Q. Can you tell us who it was that complained—

A. (Interposing.) It was Tom Hayes, George Arnholt and Ed Parris.

Q. Do you recall their conversation relative to those problems?

A. Well, I remember one time he walked in behind Mr. Arnholt and I had Century tires and Tom Hayes was in front of him and he says to Tom Hayes—I recall this question—he said, “What kind of a salesman are you with this man having Century tires in there,” and Tom gave me a dirty look. And when it blew over, Tom came in and said “I got the devil and you have to get rid of these tires.” I said I wasn’t going to. At the time I had a trickle charger that we used to put our wet batteries on and I had Delco batteries on the rack instead of Good-year.

662 Q. Was there any comment as to that?

A. Yes. I was told to take them out, too. And then I refused to do it and I think this one month I hadn’t bought hardly anything off Ed Parris, and the three of them, Tom Hayes and Ed Parris, come in and wanted to know what the trouble was, and Mr. Arnholt showed up, so I told Ed Parris what the trouble was, that I wasn’t satisfied with the product because of their adjustment. It lost my customers on account of the adjustment, and I didn’t think that was fair.

Q. Did you have any difficulty in connection with accessories? Did you carry accessories?

A. Yes, at the time I did.

Q. Fan belts, hoses?

A. Well, I carry, like I say, DuPont. We had a DuPont line of sealer and I used to carry Barsleak and I had Bardahl oil additive and Mr. Arnholt made a remark about that one day, that the Atlantic oil was so good we didn’t need an additive, and I had people that used to ask for it.

Q. What about some of the other products you mentioned?

A. Barsleak, he didn't like the idea of having that on the shelf. He picked up a bottle of that and said "What is this," and he could read it, he knew what it was.

Q. How about fan belts?

A. I stuck to Goodyear fan belts and hoses. I had outside battery cables, like I said, Packard battery cables, 663 that I bought from Gaul Derr and Shearer.

Q. Was there any comment made by them about that?

A. Yes.

Q. What?

A. They were on the shelf when I checked out and the incoming dealer refused to buy them because it was outside merchandise.

Q. Did you do any advertising around your station?

A. What do you mean by advertising?

Q. Well, did you advertise any of the products which you carried other than Atlantic gasoline?

A. There was a Goodyear sign out on the pole, Atlantic and Goodyear tires.

Q. Did you advertise any of these other products you mentioned?

A. No, I just had them on the shelves, not outside.

Q. Did you ever put up signs or attempt to put up signs?

A. No.

Q. How did you come to terminate your lease in October of 1954? Was it your idea to get out, or what?

A. No, during the last year I was there, during the summer months, I remember Tom Hayes and George Arnholt coming out to reach an agreement and they tried to get me to sign it. I refused to sign it and he said, Mr. Arnholt said, he pulled an inspection on me and said I

had a dirty station, which I didn't think was dirty myself. They seemed to think so. So he sent me a letter that my lawyer in Chester has, Mr. Katana, and in the letter they said they would give me one week to get the station in tip top shape and there was five counts against me. They were: untrained personnel, improper uniform, improper display, didn't keep a date book, which I refused to show them, because I didn't think it was their business, it was my business, I was running it, and I had a date book and I refused to show it to them every time he come in and the five counts—the dirty station, that was the fifth count.

So I sent that letter to my lawyer and told him I didn't want to be bothered until my lease was up. I didn't receive any letter that they were going to cancel my lease. Tom Hayes said there was a new dealer coming in and that was the first of October, 1954 that he stopped in. Then I had a 7-up box out in front that George Arnholt didn't like because it was white and he says "Get that box out of here," and I refused to get it out and he said—it was a red, white and blue box, because it was 7-up and he commented about that. I said I wasn't going to get it out, because it was my box, I bought it and paid for it, and he says Coca-Cola is putting out red boxes for Atlantic stations, which I thought was a fib myself, and he says that is why Coca-Cola is putting out a red box, and I said "If you want one, put one in, because I am not."

665 By Mr. Dias:

Q. I hand you Commission's exhibit 257-A and ask you if this is the five or six-point letter you referred to?

A. Yes, this is the letter.

Q. Taking these items one by one, "The standard of housekeeping maintained by you is deficient." What did that mean to you?

A. Read that again.

Q. "The standard of housekeeping maintained by you is deficient," lacking, in other words not up to par. What did that mean to you?

A. Well, at the time it didn't mean anything to me because I thought my station was as clean as any other Atlantic station around, because I used to go to other ones and I mean, the same station right now, I don't think it is as clean as they said it should be, even now. I go there about every day. I think I kept it cleaner than that when I had it. To me it looks like a pig pen today.

That is their idea, because I wouldn't keep their products in there, and that letter is some way to get you out of there.

By Mr. Dias:

Q. Let me refer you to number two now. "The efficiency of services performed at your station is not on a par with competition."

666 A. I didn't understand that myself, either. At the time we were in a price war. I don't know how you can stay in competition when you are having a price war and because I wasn't in a critical zone I wasn't allowed to go down in prices, so I say you can't meet competition.

Q. Number three: "You have not met the minimum requirements for display." What did that mean?

A. Well, I don't know. To me, I would have the proper display out of motor oil and tires. I don't know what else they wanted.

Q. Number four: "Personnel are poorly trained." How many personnel did you have?

A. At the time I had two full time and one part time and myself, four of us.

Q. How many hours did you keep the station open?

A. We were open from 7 a.m. to 11 p.m.

Q. Did you determine those hours yourself?

A. Yes, sir.

Well, they asked you, they would like you to keep open certain hours, but I thought those were good hours to keep, so I did.

Q. 7 a.m. to 11 p.m.?

A. Yes.

Q. How many shifts is that, off hand?

A. Two shifts.

667 Q. Did you have a man there at all times?

A. Yes, sir.

Q. Were you there most of the time?

A. Most of the time. If I wasn't there, there was somebody responsible there.

Q. Number five. "You do not have a regular program for expanding the sales involving direct mail campaigns, personal solicitation, and so on."

A. I didn't have personal solicitation, but I did have a mailing program.

Q. Of what type?

A. I would mail out cards on lubrication, tire sales, and what-not.

Q. Did you say tire sales?

A. I had a mailing list.

Q. You mentioned tire sales.

A. Yes.

Q. What type tire?

A. Goodyear tires.

Q. Number 6: "You do not maintain records adequate to reflect the financial status and return from various phases of your business."

A. I refused to show it to them, because it was my business not Atlantic Refining Company's business. I never went in to look at their books, and I didn't think they
668 had a right to look at my books, and that is the way I felt.

Q. Did anybody from Atlantic see your records ever?

A. Tom Hayes, the fellow in the courtroom.

Q. This was written in 1953. When did he see your records?

A. I have only showed them to him a couple of times. They expect to walk in and pick up your books and look at them any time. I would take them home so nobody could look at them but myself.

Q. What did those records contain?

A. It was a daily sheet of sales, how much TBA you would sell, and your labor for the day and gas and oil.

I have a date book from the day I started right up until today, with Cities Service, and I can show them every record they want to see, but I don't show anybody my records; the only person that sees them is the Government.

Q. Now after you received that letter, did you receive any other notice from Atlantic that you recall?

A. Notices?

Q. Yes, about inspections or anything of that sort?

A. No, only I had other inspections, but I mean this one particular inspection, after it was all over with, Tom Hayes said you came through with flying colors, and that was it. I never heard anything else. And we cleaned up because it was a special inspection as far as I was concerned, because George Arnholt was coming in to inspect himself, so just to keep peace, we cleaned the place up. It was spic and span. We keep it pretty decent for a service station.

Q. Have you ever heard of the phantom, Atlantic's phantom?

A. I heard of it, yes, but I don't remember him ever stopping around.

Q. You don't know whether he actually stopped in your station?

A. No. They might have, as far as I know.

Q. When you terminated, or when your lease was expired or cancelled, will you clear me upon that? Was it cancelled or not renewed?

A. I just didn't get a renewal. I figured all the trouble I had with them, I wasn't going to get another one anyhow.

Q. When did you first know it was not going to be renewed?

A. I guess the week before Tom stopped in and said he had a new dealer. I don't remember receiving any letter. I am almost sure I didn't. I mean, I had to get out. It was either get out or kill George Arnholt, one or the other. That was the problem I had, believe me.

Q. Did Mr. Arnholt give you any special trouble?

A. Well, I mean, I didn't like his attitude and his ways. He was disagreeable, you couldn't reason with him. I mean like that stuff about a white soda box. I don't see that. And I even said, "What are you, a Communist or something?" If I want a white soda box, I paid for it. That man would drive you nuts. I wasn't going to Norristown on account of him.

670 Q. Did he give you trouble on TRA products?

A. Yes, he did, he certainly did.

Q. Products other than the Goodyear line, is that correct?

A. He didn't like the idea of having anything in there. At one time I told him, "Mr. Arnholt, I wish I had a tape recorder in here, I would hang you right now." He says, "I didn't say nothing." And I said, "I know you didn't, because I don't have a tape recorder and a couple of witnesses." He was sneaky, brother.

Q. You were told by Mr. Hayes about a week before your lease was to expire, and as far as you remember, that was the only—

A. (Interposing.) As far as I remember, that was it. I don't remember anything else.

Q. Do you know who took your station over?

A. Carmen Gerace.

Q. What did you do when you terminated the station? Did you sell your products to him?

A. I sold him everything, it was only a couple of things we had argument on that he wouldn't buy because they were outside merchandise, and then there was a trickle charged there which was Goodyear that I didn't want to take with me and he refused to buy that, I had to leave it, and any outside merchandise I had he refused to buy. I don't remember everything I had.

671 Q. Was the Atlantic representative there during these negotiations?

A. Yes, Tom Hayes was there, the incoming dealer, the outgoing dealer, and I had my accountant with me.

Q. Did the Atlantic representative take any part in this closing out of the sale of products?

A. Yes, he wrote every item down he bought.

Q. That who bought?

A. The incoming dealer. I mean, each sheet was filled out with any merchandise he bought and we both had to sign it but when he came to outside merchandise, he refused to buy it.

He had gone to Atlantic's School and I guess he was taught not to buy anything from the outside.

Q. He came out of school?

A. Yes, he went to Atlantic's school.

Q. Did you have any difficulty, or did you sell him your Goodyear stock? Did you have Goodyear stock?

A. Yes, what I had he bought.

Q. Referring back to the time you started purchasing so-called outside TBA, can you name again for us the suppliers, the various suppliers you purchased from?

A. I bought off Gaul Derr & Shearer, in Philadelphia; I bought off of V. J. in Folcroft—at the time they were in Sharon Hill—and I bought off of Auto Parts and 672 Radiator in Folcroft, and I guess that is about it. And Ed Parris; he was the Atlantic distributor.

Mr. Dias: That is all.

Cross-Examination by Mr. Thompson.

Q. Mr. Iacona—did I pronounce your name correctly?

A. You did, sir.

Q. Do I correctly infer that you don't like George Arnholt?

A. Well, I don't, I will be truthful. I don't.

Q. But you do like Tom Hayes, don't you?

A. I am not too happy with Tom Hayes, I will be truthful.

Q. Did he push you around a bit?

A. He tried to, but I wouldn't let him.

Q. He came to see you pretty often, didn't he?

A. Quite often, yes, sir.

Q. These Atlantic salesmen get around once or twice a week to all the stations, don't they?

A. Sometimes more than that.

Q. Sometimes more?

A. Sometimes.

Q. Do you live around the neighborhood of this station, at Providence Road and South Avenue?

A. No, sir, I live in Sharon Hill, sir.

Q. That particular station is how far away from McDade Boulevard? Quite a ways, isn't it?

673 A. I would say it was within a mile. I might be wrong on that.

Q. It is out in the residential section of the county though, isn't it?

A. Well, it sits right around the street from the Secane station and there is only a few homes right around the station. There is more stores than homes in the area of the station, I would say.

Q. The old Tully-Secane (?) Golf Course is near the station?

A. Yes, that is half way between the station and McDade Boulevard.

Q. And that was a residential area?

A. There is a Catholic Church, Our Lady of Fatima, and school there now.

Q. And a lot of it has been turned into building developments?

A. That is part on Ashland Avenue side, and South Avenue.

Q. Closer to your station, just before the station opened, wasn't there quite a large building development?

A. Stores.

Q. And also a lot of houses?

A. Right in the area of the station?

Q. Yes.

A. Not close to it. There has been recently, in the past year, last couple of years.

674 Q. Well, do you know the people who live around there at all?

A. Do I know them?

Q. Yes.

A. Yes, quite a few of them.

Q. You talked about the station being late in opening. It was a new station, wasn't it?

A. Yes, sir.

Q. Do you remember why it was late?

A. Because of the bad weather, they run into bad weather, they was hoping to have it finished by December and run into bad weather and when I opened up, I opened up without a driveway, a macadam driveway, it was stone.

Q. Don't you recall that there was a neighborhood protest against any kind of a gas station being opened at this location?

A. The building was almost finished then. Sure, there was a protest against it, but I didn't know about it. I heard about it afterwards.

Q. Did you know that the Zoning Board of Adjustment turned down application for a station here?

A. For that particular place?

Q. Yes.

A. No, I did not. I was in the Service at the time, sir.

Q. When did you get out of Service?

675 A. Well, I got called back during the Korean War. I was in the Second World War and I got home in 1946 and was home four years and got called back in the Korean War, because I was in the Reserves and when I got out, I went with Atlantic.

Q. Did the people in the neighborhood after you opened the station tell you the story of the Zoning Board turning it down and they appealed to the courts?

A. There was a few people told me about it, yes.

~~Q.~~ You knew about it anyhow?

A. I knew after I was there.

Q. Did they tell you whether the Judge put some special conditions down for the station?

A. They never told me.

Q. You were not familiar with that?

A. No, sir.

Q. Were you told that Atlantic was paying particular attention to the appearance of this station because of the neighborhood problem?

A. Not as far as I remember I wasn't told about that, no.

Q. Now you and your wife are both quite good horsemen, aren't you?

A. Yes, sir.

Q. I have seen you in horse shows, I think.

A. You have never seen me.

Q. I have seen your wife then, haven't I?

676 A. No, sir.

Q. Where was your stable, just close to the station?

A. Right across the street from the station.

Mr. Dias: I object, your Honor. I don't see what this has to do with the problem at hand. I think it is improper cross-examination.

Hearing Examiner Kolb: I think the last question is confined to the station, wasn't it?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Thompson: It is very definitely relevant.

Hearing Examiner Kolb: Proceed.

By Mr. Thompson:

Q. Now while you were running the station, you were running a stable across the way?

A. I wasn't running a stable. My wife takes care of the stable. That is what George Arnholt thought, that I was running the stable, and he was wrong.

Q. You acted as the stable hand, didn't you?

A. No, sir. I would walk over now and then, when I wasn't busy, when I had proper help in the station, but I wasn't running the stable.

Q. How many horses were you keeping in those days?

A. I wasn't keeping any; my wife was keeping them.

Mr. Dias: I object, your Honor.

677 Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. There was about 12 horses in the stable across the way, weren't there?

A. That was a good block away from the garage.

Q. You are not going to tell me your wife cleaned out the stalls for 12 horses?

A. I had hired men there.

Q. You did a lot of it yourself, didn't you?

A. No, sir, I did not, and to this day I don't.

Q. I am very fond of horses, and I know they require a good deal of attention.

A. I had proper help to take care of the stable.

Q. You don't still run it, do you?

A. Yes, sir, I do.

Q. At the same place?

A. Same place.

Q. Didn't you spend about as much time at the stable as at the station?

A. I spent more time at the station.

Q. But it is true, Mr. Iacono, that on a number of occasions you would go over and help your wife clean out the stalls?

A. Never. Never.

Q. You didn't do that ever?

A. No, sir.

678 Q. You just never helped her?

A. I had the proper help to take care of the stable. I would go over and ride on Sundays.

Q. If you never helped her at that stable, I think you are a brute.

A. I might be, but I had the proper help to take care of the stable.

Q. Isn't it also a fact that in the summer time you would attend this station in dungarees and with no shirt on and completely covered with the things that you find around a stable?

A. I had coveralls on all of the time, from Eastern Overall. I had proper uniforms.

Q. And you wore them yourself?

A. I had mine on, with my name on it, "Andy."

Q. And you didn't serve the station in dungarees and without a shirt?

A. Not me, no, never. I never waited on customers without a uniform on.

Q. You had quite a lot of arguments with Tom Hayes about it, anyhow, didn't you?

A. When they started sticking their nose in your outside business, I don't think that is right. They didn't have anything to do with the station.

Q. How about your use of the station—

679 A. (Interposing.) What do you mean?

Q. I haven't finished my question.

A. All right.

Q. Did you use it as a used car lot or for cars for sale?

A. I had cars at times for sale there, yes, maybe one or two.

Q. That was specifically prohibited by the lease, wasn't it?

A. I don't remember, it might have been.

Q. Did the neighbors complain to you about that use of the station?

A. About used cars?

Q. Yes.

A. Not that I remember, no, sir.

Q. Were you told that they complained to Atlantic about it?

A. If I was told, I stopped it.

Q. Did you charge parking fees at the station?

A. Never.

Q. You operated it as a parking lot for friends, didn't you?

A. What is that?

Q. You say you did?

A. And they still do today, sir.

Q. You did operate it as a parking lot?

A. Customers would leave their cars there to be serviced, they parked there, yes.

680 Q. Do you know a gentleman, living in that neighborhood named Mr. John Dowling?

A. No, sir.

Q. You never heard of him?

A. I can't remember.

Q. D-o-w-l-i-n-g?

A. Maybe I would recognize him if I saw him in person.

Q. Maybe I can refresh your recollection by identifying him. Do you recall him as being the nuisance inspector of the township?

A. He was the nuisance—

Q. Yes. Do you recall him?

A. From Upper Darby?

Q. Yes.

A. The only inspector I remember was the inspector that came around to check the garage, the fire chief inspector.

Q. How about the Health Commissioner, do you remember him?

A. No, that is the only one I remember.

Q. Now did the nuisance inspector come around and make complaints about the sanitary conditions at your station?

A. (Nodding negatively.)

Q. He did not?

A. Not that I remember. The only one I remember at the station was the fire chief.

Q. Did the fire chief complain about the amount of refuse in back of the station?

681 A. No, sir.

Q. Did the nuisance inspector or the Health Commissioner—

A. (Interposing.) I don't remember the gentleman, sir.

Q. Not when you were there?

A. Not when I was there, no.

Q. Did your employees report to you that that had happened several times?

A. (Nodding negatively.) If anybody important ever came to the garage, they would write down and tell me about it. I don't remember any gentleman by that name stopping in and I don't remember receiving a letter from the Health Department.

Q. Do you remember neighborhood complaints about an old truck body you had on the station a long time?

A. And it was taken away.

Q. But you do remember the complaints?

A. Yes, but what has that got to do with TBA? I can't understand that. We are talking about TBA and you are talking about horses and truck bodies and used cars.

Q. Well, I will try to make the point after a while.

A. Okay.

Q. How about these lads you had working around the station. You say you had two full time employees.

A. Well, one was just graduated from high school and the other was my son.

Q. How old were they?

682 A. 18, one, and the other one 17, and I had an older gentleman who was 27.

Q. Is it important in the operation of a station for the employees to know what they are doing when a car comes in for service?

A. That's right.

Q. They have to know all kinds of mysterious things like lubrication, don't they?

A. That's right.

Q. Had these boys been trained?

A. Well, I wasn't even trained myself, when you get down to it.

Q. Yes, I think I would agree with that. You never went to a training school at all?

A. I didn't go to a training school, no.

Q. Without in the slightest deprecating a competitor of Atlantic, your training had been gained by City Service, had it not?

A. What do you mean gained?

Q. Had you been a City Service operator before you got the Atlantic station?

A. No, no, never.

Q. You took City Service station afterwards?

A. Yes, sir.

Q. You came right out of the Service into Atlantic?

683 A. That's right.

Q. Do you know a Mr. W. P. Ferguson who lives in the area?

A. In the Secane area? No, I don't think so.

Q. How about a Mr. Cyrus McKeown, do you know him?

-A. Not by name, no, sir.

Q. You don't recognize the names or don't know their wives as customers of the station?

A. Not off hand, I don't, no, sir. It has been back too far.

Q. Were you advised by Tom Hayes that both of them had filed complaints about the lubrication service they got at your station, complaints with Atlantic, I mean?

A. Not that I remember.

Q. Were you advised by Tom Hayes that other complaints were filed with Atlantic about the rudeness of the employees at your station to customers?

A. Not that I remember, no, sir. They might have, but I don't remember.

Q. Did Mr. Hayes tell you what ratings you were getting on the inspection reports at this station?

A. Yes.

Q. Very bad, weren't they?

A. As far as they were concerned, sir. Hell, I can pull an inspection on them and give them the same rating and pull another one on you and give you the same rating. 634 I have been through a lot of inspections, believe me, and I still have inspections today with City Service, and by God they are better. That is their opinion. When they don't like you, by God, they give you anything.

Q. Do you get along well with City Service?

A. Yes, sir.

Q. You are much happier than you were with Atlantic?

A. That's right, and if you don't believe me, ask Frank Gible, because he used to be with Atlantic.

Q. I congratulate you on your sense of humor.

Mr. Thompson: That is all.

Mr. Correa: I have no questions.

Hearing Examiner Kolb: Any further questions?

Mr. Dias: No, sir.

Hearing Examiner Kolb: That is all, you may be excused.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a five-minute recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Pollack to the stand.

685 ISIDORE JACK POLLOCK was thereupon called as a witness for the Commission and having been sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Would you please state your full name?

A. Isidore Jack Pollock.

Q. What is your home address?

A. 7442 Malvern Avenue, Philadelphia.

Q. Were you at one time an Atlantic leasee dealer?

A. Yes.

Q. During what period and what locations?

A. 1940 to 1948, at 10th and Chestnut Street, Chester, and from 1948 to March of 1953 at 9th and Kerlin Street, in Chester.

Q. So you were an Atlantic leasee operator for 13 years approximately?

A. Approximately, yes.

Q. When you first became an Atlantic dealer in 1940, was TBA a very important factor in service stations?

A. No, very secondary.

Q. When did it become an important factor in service stations?

A. I would say approximately after the war, about 1946.

Q. And from that time on did it develop as an important factor?

A. It developed very important. It was quite a bit of profit in the gasoline business.

Q. Now do you recall being notified by Atlantic that it was going to sponsor Goodyear?

A. Well, the first I have a recollection of that, we were called to have a luncheon or a buffet, a dinner, or something and I don't recall what it was, and at that meeting

or dinner or luncheon, it was broached that we were going to be connected with Goodyear products.

Q. And do you recall the approximate date of that?

A. The approximate date?

Q. Yes.

A. I am afraid I couldn't. It might have been possible sometime in 1951, I think, I am not sure.

Q. Could it have been in or about March, 1951?

A. It could have been. I am not sure.

Q. Now prior, up to that time, what brand tires had you been carrying?

A. Lee Tires.

Q. And what brand batteries?

A. Exide.

Q. And what brand of accessories? Just some of the more important brands?

A. Why, polishes of one sort or another; then, it wasn't Simonize. And some of the DuPont, and—

687 Q. Did you purchase Fram oil filters?

A. Yes.

Q. And Thermoid fan belts?

A. That is right.

Q. And from whom did you purchase, who was your primary supplier of TBA?

A. Ed Parris.

Q. Where was he then located?

A. He was then in Sharon Hill. I don't recall the exact address now. On Chester Pike:

Q. And after that announcement of the change-over by Atlantic to Goodyear, did Mr. Parris continue to sell Lee tires, Exide batteries, and the various brands of accessories you were carrying?

A. Why, he sold them until his supply ran out.

Q. Did he then become the Goodyear TBA supplier in your area?

A. That is correct.

Q. And after the change-over at that time was your station identified with Goodyear valances, window valances?

A. Yes.

Q. And was it identified with the Goodyear outdoor sign?

A. Yes.

Q. Prior thereto, did you have a Lee or Exide sign up?

A. Yes, I think I did.

688 Q. And were they removed?

A. They must have been.

Q. And were you advised that this change-over in identification was to take place?

A. No, sir.

Q. Was it done at your request?

A. No.

Q. Now did you continue to carry Lee tires after the change-over in or about March 1951?

A. Yes, I carried them until I sold the merchandise I had on hand.

Q. And did you begin to purchase Goodyear tires at that time?

A. Yes, I purchased Goodyear tires.

Q. And from whom did you purchase Goodyear tires?

A. From Ed Parris.

Q. And after your Lee tires ran out of stock, did you thereafter purchase Lee tires?

A. Yes, I bought Lee tires afterwards also.

Q. Can you state the circumstances surrounding your first purchase of Lee tires after the stock ran out?

A. Well, I was offered a very good deal, I thought, from Lee Tire, and I purchased them.

Q. About how many tires did you purchase?

A. Anywhere from 25 to 50, I believe.

Q. That would be a substantial purchase, would it not?

689 A. That is right.

Q. Was anything ever said about such purchase by Atlantic representatives?

A. There was a Mr. Vayda, and he sort of tried to raise the devil with me about why I purchased—

Q. (Interposing.) Who is Mr. Vayda?

A. He was my salesman.

Q. And for which company?

A. Atlantic Refining Company.

Q. Did anyone else from Atlantic make any comments about purchasing—

A. (Interposing.) A Mr. Arnholt. He was the immediate superior of Mr. Vayda.

Q. About what approximate date did this occur?

A. I beg your pardon?

Q. About what approximate time were the statements made by Mr. Vayda and Mr. Arnholt?

A. It must have been sometime in—possibly in the latter part of the summer or fall of 1951.

Q. Would you state the conversations you had with Mr. Vayda and Mr. Arnholt at the time?

A. Well, they had asked me why I purchased the tires.

Q. Do you mean Lee tires?

A. Yes, instead of buying from Goodyear. Or from Ed Parris. And I told them that it was cheaper, the 690 deal that I received, and if I could receive the same deal from Goodyear or Ed Parris, as I did from Lee, I would have purchased Goodyear, but as I didn't, I bought the Lee tires.

And Mr. Arnholt said, after all, you have been with the company for quite some years, there is no reason why you shouldn't continue to buy from the company.

Q. And thereafter, did you make purchases of Lee tires?

A. Yes.

Q. And was any comment ever made by any Atlantic representative?

A. Just a sly dig now and then.

Q. Who would make the sly digs?

A. Mr. Vayda.

Q. Now, did you purchase any brands of batteries, other than Goodyear brand, after March 1951?

A. Yes, Bowers batteries.

Q. Was anything ever said to you by an Atlantic representative in respect to your purchases of Bowers batteries?

A. Yes. I had a large sign outside with batteries on the display and they asked me to take them in, to remove them.

Q. Was the large sign, did the large sign advertise Bowers batteries?

A. That is right.

Q. Can you fix the approximate time when this occurred?

A. It was approximately, I would say, the spring of 1952.

691 Q. And do you recall the name of the Atlantic representative who made the statement to you?

A. Mr. Vayda.

Q. Did Mr. Vayda ever make any other comments to you with respect to the purchase of Goodyear TBA by you?

A. In what respect?

Q. Did he ever threaten you with cancellation?

A. Well, with this battery deal, through the heat of the argument, I told him to get off the premises and he told me he was going to have the lease cancelled, and that is the way it remained.

Q. And was that the argument over the Bowers batteries?

A. That is right.

Q. Mr. Pollock, would you state your approximate gallonage during the period when you were in business? That covers quite a bit of time, but—

A. Well, from approximately 50,000 to 80,000, per month.

Q. 50,000 to 80,000 gallons monthly?

A. It rose, it averaged, I would say, close to 65,000 throughout the time I was there.

Q. Were you one of the largest dealers in the Chester area?

A. I think so.

Q. Did you do any business on credit?

A. Credit? Personal or—

Q. I am referring to Atlantic credit cards.

692 A. Yes, quite a bit.

Q. And were you limited on such sales to sponsored TBA items?

A. Yes.

Mr. Thompson: I object to that. It calls for a construction of the agreement. There is no such restriction in the agreement.

Would you read the question, please?

(Question and answer read.)

Hearing Examiner Kolb: The objection will be overruled. It will stand.

Mr. Kelaher: Re-state your answer, Mr. Pollock.

The Witness: Yes, I said.

By Mr. Kelaher:

Q. After the change-over to Goodyear TBA, the only TBA products you could sell on Atlantic credit cards were Goodyear TBA products?

Mr. Thompson: That is objected to for the same reason.
Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. Mr. Pollock, after the change-over to Goodyear TBA, who was your primary supplier of accessories?

A. Ed Parris.

Q. And did you purchase other accessories from 693 other local suppliers?

A. Yes, I did.

Q. Would you name some of them?

A. Chester Auto Parts.

Q. Where are they located?

A. In Chester, on 9th—

Q. That is all right. And the next one?

A. Berrodin Auto supplies in Philadelphia, Lee tires and Bowers batteries, Auto Parts and Radiator, and Delaware County Motor Parts.

Q. Mr. Pollock, are you familiar with the Delaware County Gasoline Dealers' Association?

A. Yes. In fact, I was one of the first presidents.

Q. You were the first president?

A. One of the first. I mean, it had been in effect, I believe, in 1935 or 1936, and then it was in abatement until 1944, I think, and then it was re-activated then and that is when I became president.

Q. And who belonged to the Association?

A. Why, I would say close to 50 percent of the dealers in Delaware County.

Q. Including Atlantic dealers?

A. Atlantic, Esso, everyone.

Q. And what was the purpose of the Association?

A. To help the gasoline dealers in any way possible.

694 Q. In what respect?

A. In every respect, in trying to keep the companies from riding roughshod over all the dealers.

Q. And by companies, you are referring to various oil companies, including Atlantic Refining Company?

A. That is right, all of the oil companies.

Q. Now referring back to the change-over meeting, the luncheon, dinner, or whatever it was, at which you were advised of the change-over by Atlantic to Goodyear TBA, were other Atlantic dealers present at that meeting?

A. Oh, yes, I believe it was two territories. That is the Chester territory and I imagine it was the Delaware County territories, there are two or three salesmen's territories involved in there, I think.

Q. So there were quite a number of Atlantic dealers present?

A. That's right.

Q. Do you recall where that meeting was held?

A. I think, I am not sure, but we had so many meetings, quite a few meetings, but I think it was out on 69th Street, at— (After pause.)

Q. Would the restaurant be Kostik's? Would that refresh your recollection?

A. That is right.

Q. And based on your own observation and knowledge, after that announcement, did other Atlantic dealers in
695 your area change over to Goodyear TBA?

A. As far as I know of, quite a few did.

Q. Would you say the majority of them did?

A. Yes.

Mr. Kelaher: Nothing further, your Honor.

Cross-Examination by Mr. Thompson.

Q. Mr. Pollock, you had a lot of friends in Atlantic, didn't you?

A. Oh, definitely, everyone.

Q. You didn't mention Joe Connelly, who was your salesman the last couple of years after Vayda left?

A. That's right.

Q. And he was a very good friend of yours?

A. He was, yes.

Q. Now when you left the station, you left for the purpose of taking a tap-room in Chester?

A. That is right. A tavern, please.

Q. Excuse me. I was going to ask you the address. Next time I get through Chester, I want to stop in.

A. I have had a lot of requests for my address for stopping in, and if all the people stopped in, I would have to enlarge my place. So far, I haven't.

Q. You will recall your lease had a cancellation provision whereby before the end of any year you could 696 notify Atlantic of your desire to leave?

A. That's right.

Mr. Thompson: I ask that this document be marked for identification as Respondent's exhibit A-3.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: The document will be marked Respondent's Exhibit A-3.

(The document referred to, was marked Respondent's exhibit A-3 for identification.)

By Mr. Thompson:

Q. Mr. Pollock, you remember this letter, of course? I am showing you Respondent's exhibit A-3 for identification.

A. Yes.

Q. Yes?

A. Yes, I do.

Q. This letter was sent special delivery registered by you wasn't it, attention Mr. Walters?

A. Right.

Q. And in addition to that, didn't you drop in at Atlantic and have a pleasant farewell session with Mr. Nelson and Mr. Walters?

A. Yes.

Q. And there was no hard feeling about your termination at all?

A. No; none at all.

697 Q. As a matter of fact, Atlantic was very sorry to lose you, weren't they? Didn't they so express themselves?

A. I thought I felt that feeling, and was glad of it.

Mr. Thompson: That is all.

Mr. Correa: I have no questions.

Mr. Kelahe: No further questions.

Hearing Examiner Kolb: Thank you, Mr. Pollock. You are excused.

(Witness excused.)

Mr. Dias: I would like to call Mr. Kernaghan.

THOMAS J. KERNAGHAN was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follow:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address for the record?

A. Thomas J. Kernaghan.

Q. And your business address?

A. 1627 Fairmont Avenue.

Q. And the name of the company?

A. Rotzell Company.

Q. Is that a branch store of the Rotzell Company?

A. That is the main office, 1627 Fairmont.

698 Q. That is the main office?

A. That's right.

Q. How long have you been employed by Rotzell?

A. Approximately 12 years.

Q. In what capacity?

A. Salesman.

Q. Do you sell the full Rotzell line?

A. That is right.

Q. Were you employed in the TBA business prior to the time that you were employed by Rotzell?

A. Yes.

Q. For how many years?

A. Oh, I would say 12 to 15.

Q. What is your sales territory, Mr. Kernaghan?

A. South Philadelphia.

Q. Do you solicit service stations?

A. Yes, we do.

Q. Are there any Atlantic service stations in your sales territory?

A. Yes, there are.

Q. Do you solicit their business?

A. About four I believe I solicit now.

Q. Do you know how many there are in your territory?

A. I would say approximately 12.

Q. You say you solicit four now. When did you
699 discontinue soliciting the others?

A. A number of years ago.

Q. Can you tell us about how many years ago?

A. About four.

Q. Why did you discontinue soliciting their business?

A. Well, due to the fact that it seemed that they were more or less compelled to buy from the distributor, their own distributors.

Q. Do these stations carry TBA supplies?

A. Yes, they do.

Q. Do you recall the brands that are advertised by the stations?

A. Well, there is—you mean in the way of tires and that?

Q. Tires, and batteries?

A. Well, of course they used to have Lee tires and now I understand it is the Goodyear tire, and DuPont chemical line, Prestone antifreeze.

Q. Have you observed that advertising about those stations?

A. Yes, I have.

Q. You say you sell to four. What products do you sell to them?

A. Mostly antifreeze today.

Q. Today. Did you sell anything other than antifreeze to them heretofore?

A. Yes, I used to be able to sell them the DuPont chemical line.

700 Q. How long ago was that?

A. That has been several years ago.

Q. Can you recall the names of those stations that were purchasing—

A. (Interposing.) There has been quite a change of dealers, and consequently I don't recall their names now. But one in particular I do know that I get antifreeze business from is the Previti. They had two stations, one at 18th and Dickison and the other at 17th and Passyunk.

Q. You sell him antifreeze today, is that correct?

A. I sold him last season.

Q. Yes, but I mean currently.

A. Yes, sir.

Q. Did you sell him any other products prior to current?

A. No, I didn't sell them anything.

Q. Have you solicited all these stations at one time or another?

A. Yes, I have.

Q. How often do you call on the stations you are now selling?

A. About every two weeks.

Q. Do you solicit business, battery business?

A. Well, we would like to, but I can't sell them.

Q. How about your accessories, fan belts, hose filters?

A. That is tied up in their TBA set-up.

Q. Do you attempt to sell those products to them?

701 A. We tried to, yes. I have tried to.

Q. What do you sell to those stations that you are now selling to, mainly?

A. Well, a few of them are doing repair work, and we sell them brakes, fuel pumps, in other words—

Q. (Interposing.) Are they so-called hard parts, is that what you mean?

A. Yes, sir.

Q. Do those stations handle TBA?

A. Yes, they do.

Q. What TBA products do they carry in those stations?

A. Well, tires, batteries and accessories.

Q. But what brand?

A. Well, of course, as I said before, it was Lee and I believe it is Goodyear batteries now and Goodyear tires, and—

Q. Do they have—excuse me, I am sorry. Go on and finish.

A. I believe, if I recall correctly, Thermoid belts, Goodyear belts today—they changed over from Thermoid to Goodyear.

Q. Do they advertise those products, Goodyear products, about the station?

A. Yes. I mean, they are on display and I would say they advertise them.

Q. Do they have banners or decals on the windows?

A. Yes.

702 Q. What store do you work out of in the Rotzell company?

A. The 18th and Christian Street store.

Q. So that the address you gave us earlier was the home office of Rotzell?

A. That is right.

Q. But you are working out of the 18th and Christian, is that right?

A. That is correct.

Q. And do you have truck service or delivery service?

A. Yes, we do.

Q. Do you, Mr. Kernaghan, know who the Goodyear supplier is in your sales territory?

A. I believe it is Ellwood Kieser.

Q. And are your products, your batteries, accessories, are they competitive with the products of Goodyear sold by Mr. Kieser?

Mr. Corréa: I object to that question on the ground that it calls for a conclusion and judgment of the witness, and there is no proper foundation for it.

Hearing Examiner Kolb: The objection is overruled.

Mr. Dias: You may answer.

A. I would say they are, yes.

Mr. Dias: That is all.

703

Cross-Examination by Mr. Ballard.

Q. Mr. Kernaghan, I think you are with the same supplier as Mr. Heller, aren't you?

A. Yes, that is right.

Q. I think Mr. Heller told us that he served all kinds of customers; do you serve different classes of customers, too?

A. That is my privilege. I can solicit any sort of business, service stations, car dealers—

Q. (Interposing.) How about fleet accounts? Do you serve them?

A. Fleet accounts, yes, I have a few of those.

Q. What are the majority of your customers, what class?

A. Independent repair shops.

Q. You have some garages, too? Is that the same thing?

A. Yes.

Q. And some dealers, car dealers?

A. That is right.

Q. How many service stations all told?

A. Well, I have sorta gotten away from calling on service stations, due to the competition. I would say I have about 10 or 12 service stations today.

Q. How many customers all told?

A. About 175.

Q. And the area is generally in South Philadelphia?

704 A. South Philadelphia, yes.

Q. Are you free to go into other areas, if you wish?

A. With the permission of the office.

Mr. Ballard: I don't think I have any further questions.

By Mr. Correa:

Q. Mr. Kernaghan, you don't sell tires, do you?

A. No, we do not.

Q. Now you say you have 12 Atlantic stations in your territory?

A. How is that?

Q. Did you say you had 12 Atlantic stations or 12 service stations in your territory?

A. I call on about 12 service stations, including Atlantic.

Q. All told?

A. Yes.

Q. How many Atlantic?

A. I would say about 4.

Q. You say you sell four of the 12 service stations?

A. I have 12 service stations, yes.

Q. Do you know what line of tires the Atlantic service stations in your area sell?

A. Goodyear.

Q. Do you know whether any of them sell Lee tires?

A. Today, I don't know. I mean I know they used to sell Lee.

705 Q. You don't know whether they sell them still today or not, any of them?

A. I wouldn't be in a position to say.

Q. You are not really much interested in tires, are you?

A. That is right.

Mr. Correa: No further questions.

Hearing Examiner Kolb: Anything further?

Mr. Dias: I think there is a little confusion created by cross-examination.

Redirect Examination by Mr. Dias.

Q. I think you stated you sold to about 175 customers of all types?

A. That is right.

Q. And you call on about 10 or 12 service stations of all types?

A. That is right.

Q. And of that number about four are Atlantic stations, is that correct?

A. That is right.

Q. At any time since you have been employed by Rotzell did you sell to more service stations than these 10 or 12?

A. Yes, I used to call on quite a few service stations.

Q. How did the number of service stations at that time compare to the total number of customers in your sales territory—

706 Mr. Correa: (Interposing.) I object to the question unless at that time be fixed. We have no time.

Hearing Examiner Kolb: Try to fix the time, Mr. Dias.

By Mr. Dias:

Q. When you stated that you called on more service stations at one time, can you give us an approximate date on that?

A. Well, up until the time the oil companies came out with the TBA set-up, we were able to get some business from most any of the service stations.

Q. Approximately what time, when was that, do you recall?

A. I would say it was about eight years ago.

Q. About eight years ago?

A. Yes.

Q. All right then. Prior to that period of eight years ago, did you sell to more service stations than you sell to now?

A. That is right, yes, sir.

Q. And did you sell to more Atlantic service stations at that time?

A. No, I wouldn't say so.

Q. You did not?

A. No.

Mr. Dias: That is all, your Honor.

Mr. Ballard: No further questions.

Mr. Correa: No further questions.

707 Hearing Examiner Kolb: That is all, Mr. Kernaghan.

(Witness excused.)

Mr. Dias: I would like to call Mr. Vick.

JOHN J. VICK was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. State your full name and business address for the record please?

A. John J. Vick, 5913 Ridge Avenue, Philadelphia Wholesale Distributors, Incorporated.

Q. How long have you been employed by Philadelphia Wholesale Distributors?

A. Approximately 20 years.

Q. And in what capacity?

A. Salesman.

I wish to state that as a salesman, approximately 12 years.

Q. And prior to that time?

A. Inside.

Q. And what is your sales territory?

A. Primarily the Northeast, Frankford, Richmond, Kensington, Mayfair.

708 Q. Northeast Philadelphia?

A. That is right.

Q. What type customer do you solicit?

A. I solicit the service stations, fleet accounts, industrial accounts, and car dealers.

Q. Among your service stations, are there any Atlantic stations?

A. Yes, there are. There are, I believe—a rough estimate—25 Atlantic stations.

Q. In your sales territory?

A. That is right.

Q. And of that number, do you sell to any of them?

A. I sell to what I term an independent Atlantic sta-

tion, the person that owns his own property, approximately 10.

Q. What type product do you sell to him or to that type of station?

A. We sell him the entire TBA set-up, which includes batteries, polishes, antifreeze, oil, Kendall 2000 mile oil.

Q. Are there other type Atlantic stations in your territory?

A. Yes, they are what I call a lessee Atlantic station, one that pays rent to the Atlantic Refining Company?

Q. And you sell TBA products to those stations?

A. No, I don't.

Q. Do you attempt to sell to them?

A. Yes, I do, and wherever I do, I might get a sale 709 in a few stations, and they have to hide it in the back room.

Mr. Ballard: I object, and move to strike, your Honor, unless that is tied down with places, dates and times.

○Hearing Examiner Kolb: The answer will be stricken unless tied down to a specific time.

By Mr. Dias:

Q. Can you give us a specific instance of that occurrence?

A. Well, I have sold to Pinkerton Atlantic, Caster and Unruh, and in any instance where I do sell them, I am more or less told, if an Atlantic salesman is around, not to—

Mr. Ballard: (Interposing.) —Your Honor, I object. That is one such instance singled out and told about and then another.

By Mr. Dias:

Q. Can you give us a time and place that that conversation took place?

A. That could be any time I call on the account.

Q. Well, the most recent time, can you place that?

A. About two weeks ago.

Q. Over what period of time has that occurred?

A. I don't understand that question.

Q. Well, you indicated that that has happened from time to time. Do you recall the most recent instance, two weeks ago, is that correct?

A. That is right.

710 Mr. Corréa: I object to the question on the ground it is indefinite. I think this refers to something that has been stricken out, but I am not clear as to that either.

Mr. Dias: I thought the objection to the question was the lack of definiteness.

Mr. Corréa: But you are not making it any more definite. This isn't making it definite. That was the objection. Counsel should ask his questions in the ordinary way, as in courts of law.

Hearing Examiner Kolb: If you discuss instances, you will have to get definite instances and state the parties involved.

The Witness: Pardon me. I shall give an instance where I made a call this morning.

Mr. Corréa: I would rather the witness answered questions rather than volunteering or making a statement.

The Witness: I was asked for an instance and I am offering an instance.

Mr. Corréa: There is no question pending.

Hearing Examiner Kolb: Yes, there is. There is a question pending as to instances. We have stopped him from going ahead because he hasn't stated the definiteness of it and he is now attempting to do that.

• The Witness: Referring to an instance, I made a call this morning on Mr. Scotty McArthur at Lawn-711 dale and Erie Avenue. I stopped in and asked for a Prestone antifreeze order. Mr. McArthur stated he has already placed his order and I asked him with whom and he said Atlantic Refining Company.

'I asked him if he would buy some Exide batteries and he said he is not allowed to buy them. I offered him a polish—if it is in order, I will also say the polish was \$4.00 below the price of Atlantic's price, per case—and he said "I wish I could buy those deals, but I am not allowed to."

I also mentioned the fact I am going down to a hearing and he says "I wish you a lot of luck." He says, "I hope you can stop those fellows." That is an instance.

Another instance, I called on Mr. Ed Ringenary, Broad and Walnut Streets, and this was about two months ago. I call on him occasionally, and I asked him to buy Prestone, Exide, Kendall, and he says, "Are you out of your mind? Why, they would cancel my lease out immediately." He says, "They even have spooks in the territory." I said, "What do you mean by spooks?" He says, "Why they have fellows coming in here and trying to offer merchandise at lower prices just to see if you would buy from someone else." He again stated that he would even testify, if called, against the Atlantic Refining Company. He again wished us a lot of luck and wished that we would organize to fight against Atlantic, against the pressure of their purchases.

I think that is sufficient.

By Mr. Dias:

Q. You state that you sell regularly to independents. What do you sell to them?

A. To the independent, a fellow that owns his own property, we sell him Kendall oil, we sell him Exide batteries, we sell him Prestone antifreeze, we sell him AC sparks, filters, Fram filters, and I would say a hundred percent of what he pleases to buy.

Q. These leased stations in your territory, do you recall whether or not they handle TBA products?

A. Yes, they do. They handle the same lines we distribute. They carry DuPont chemicals, they carry John-

son's chemicals, they carry Prestone antifreeze, they carry AC spark plugs, and filters, yet we are unable to secure their business.

Q. What type tires do they carry, do you recall?

A. We carry the Goodrich line of tires and we are not in a position to do a job with Goodyear because of the tire set-ups with the refining companies. We more or less do very little on tires.

Q. I was referring to the tires carried by these leased Atlantic stations in your section?

A. They carry the Goodyear tires.

Q. Batteries?

A. They carry Goodyear batteries.

713 If you wish another instance, I will give you another instance of an account—

Mr. Correa: (Interposing.) Is the examination being conducted by the witness or by counsel, may I inquire?

The Witness: I have been asked for instances; I offer another instance.

Hearing Examiner Kolb: He is answering as he thinks of them.

The Witness: I can't offer everything within five minutes, so I am just proceeding with the interrogation and the questions asked.

By Mr. Dias:

Q. Do you recall any other instances?

A. Mr. Bob Provost, Jr., Witaker and Hunting Park Avenue, I went in to offer him or solicit him DuPont anti-freeze business, and he says: "What do you want, the roof to cave in on me? I would lose my lease immediately." So I asked him if he did any business with the jobbers, and he says very little. "The only time I give any business to a jobber is when I am out of a certain part that Atlantic doesn't carry and I will call on a jobber."

Q. Can you tell us when that occurred, when that conversation with Mr. Provost occurred?

A. This was about March.

Q. This year?

714 A. Yes.

Q. Mr. Vick, do you know who the Goodyear supplier is in your territory?

A. There are two that I know of, Ellwood Kieser and Harvey George.

Q. Harvey George?

A. Yes, as he is referred to.

Q. Can you give their addresses? We have the address of Ellwood Kieser. How about Harvey George?

A. He is up in the Northeast somewhere. I don't know his address. He covers the Northeast territory.

Q. If you know, Mr. Vick, do these Goodyear suppliers, Kieser and George, supply Atlantic stations?

A. Yes, they do.

Q. And if you know, do they both cover the same territory or different territories?

A. I don't know, I don't believe so. Ellwood Kieser operating, I believe, out of Fairmont Avenue covers more or less the downtown area, whereas Harvey George possibly covers from Erie Avenue North or approximately that territory.

Q. Mr. Vick, are your batteries and accessories and other items in TBA line in competition with Goodyear batteries and accessories sold by Kieser and George?

A. Yes.

Mr. Correa: Give me a chance to object. I object,
715 your Honor, on the grounds I have heretofore stated, that it calls for a conclusion of the witness, it calls for the operation of the witness' mind, and is an objectionable question on every traditional ground, as I have stated in a court of law with respect to this type of question.

Hearing Examiner Kolb: Overruled.

Mr. Dias: Have you answered that?

Mr. Correa: Yes, I think he answered before I objected.

The Witness: I shall bring up an instance again before even this question was brought up, where in calling on Mr. McArthur, speaking of competitive prices, I offered him a case of polish \$4.00 cheaper than Atlantic bills him for it, and he still couldn't buy it.

By Mr. Dias:

Q. What type of polish was that?

A. Johnson's polish.

Q. What type does he carry?

A. He carries Johnson's and DuPont's.

716 Mr. Dias: That is all.

Cross-Examination by Mr. Correa.

Q. Mr. Witness, do you sell tires?

A. We distribute tires, I don't sell them.

Q. Do you?

A. No, I don't.

Q. Have you ever sold a tire?

A. Yes.

Q. When?

A. Only to accommodate—I can't specifically—

Q. (Interposing.) When? Can't you answer my question?

A. I have no definite date of selling a tire.

Q. Can you give me an approximation?

A. An approximation, about one month ago.

Q. And how many tires have you sold in the last year?

A. About a dozen.

Q. Last five years?

A. A couple of dozen.

717 Q. And in the last ten years?

A. A couple dozen.

Q. So that means, I take it, that in the five years preceding the last five years, you sold none?

A. That's right.

Q. What tires have you sold, sir?

A. Goodrich.

Q. In every instance?

A. That is right. I also wish to state that I didn't sell to Atlantic dealers, if that is the question.

Q. Mr. Witness—

A. (Interposing.) You asked the question if I sold tires and I wish to state I didn't sell to Atlantic stations.

Mr. Correa: I think, Mr. Examiner, it would be helpful if the witness might be told to confine himself to answering questions responsively; we would get on faster.

Hearing Examiner Kolb: Just answer the questions that are asked.

The Witness: Yes, sir.

By Mr. Correa:

Q. Now sir, you have mentioned two or three dealers, Atlantic dealers, with whom you have had conversations, you say, which you related in the record?

A. That's right.

Q. And I take it you have supplied, prior to your
718 appearance here, supplied counsel for the Commission with the information concerning those dealers and what they had to say about this matter?

A. What information are you asking about?

Q. The information you gave us on the record a while ago.

A. No, how could I supply them when I made that call this morning. I didn't see these gentlemen this morning.

Q. The question was, did you or didn't you. You say no?

A. No, I didn't.

Q. All right, you have answered my question. Now you say you saw certain of these dealers, one I think you said two weeks ago and another two months ago, didn't you?

A. I didn't get that question.

Q. Did you tell us of a conversation you had with an Atlantic dealer two weeks ago and of another conversation you had with another Atlantic dealer two months ago?

A. That's right.

Q. Is it not the fact that the Atlantic dealer who, according to you, said he was willing to come and testify in this proceeding; was the one you interviewed two months ago?

A. That's right.

Q. Now did you advise counsel for the Commission of the willingness of this gentleman to come and testify in this proceeding?

A. This particular gentleman, yes.

719 Q. You did?

A. Yes, sir.

Q. Now did you advise them also of the conversation you had with the gentleman whom you interviewed, according to you, two weeks ago?

A. No, I didn't see the gentlemen two weeks ago.

Q. Now sir you said that the Atlantic stations in your territory are supplied by Ellwood Kieser and Harvey George?

A. That is right, sir.

Q. And they are Goodyear dealers, are they?

A. That is right.

Q. And they are in competition with you?

A. In what respect, sir, sales or—

Q. Sales, yes.

A. Yes.

Q. No doubt, is there?

A. Sales, yes.

Q. And if this proceeding would result in their competition with you being rendered less effective, that would be a consummation devoutly desired by you, would it not?

A. I think that is more or less the purpose of this meeting.

Mr. Correa: Thank you.

Mr. Ballard: No questions.

720

Redirect Examination by Mr. Dias.

Q. In reference to those men, Ellwood Kieser and Harvey George, did they offer you the type competition that you can't meet individually?

A. No, we offer the same things, there are standard prices. However, they are not permitted to buy from us, that is, the Atlantic service stations.

Q. Do you sell to other type service stations in your sales territory?

A. Yes, I do.

Q. And Mr. Kieser, Mr. George, are they competitive factors in those?

A. No, just in Atlantic stations is their—more or less their field and territory.

Q. As a matter of fact, do you know, if you know, do those two suppliers sell to any stations or dealers other than Atlantic stations?

A. None that I know of, sir.

Mr. Dias: That is all.

Recross Examination by Mr. Correa.

Q. Would you say they didn't, or you just don't know?

A. None that I know of.

Q. You just don't know?

721

A. None that I know of.

Q. You just don't know whether they did or not?

A. I say none that I know of.

Q. Would you mind answering the question?

A. What is the question?

Hearing Examiner Kolb: The witness answered the question.

Mr. Correa: I submit he hasn't, but I am not going to spend any more time—

Hearing Examiner Kolb: (Interposing.) There is no use in spending a half hour arguing about that.

Mr. Correa: I am not going to argue with this witness. He seems to be a frustrated lawyer.

The Witness: I wish I were.

Mr. Correa: That is all.

The Witness: Am I excused, sir?

Hearing Examiner Kolb: Yes.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until two o'clock.

(Whereupon, at 12:40 p.m. the hearing was adjourned to reconvene at 2:00 p.m. the same day.)

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Afternoon Session.

(2:05 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Examiner, may I refer to Commission Exhibit 293-A and B which were received in evidence at the close of the hearing yesterday.

With the permission of staff counsel I desire to add to those exhibits as 293-C and -D the following two documents which are pertinent to the exhibit heretofore offered.

Exhibit 293-C is a letter from Mr. McCreery to Mr. Boor dated October 3, 1952 on the same subject matter as the

letter of August 14, 1952, and Exhibit 293-D is a reply from Mr. Boor to Mr. McCreery dated October 7, 1952.

I understand there is no objection.

Mr. Kelaher: No objection.

Mr. Correa: If your Honor please, on the assumption which the proffer of the exhibits which I have not seen relate to the subject matter of 293-A and 293-B on behalf of Goodyear they are objected to on the ground that the whole subject matter of these four exhibits relates wholly and solely to dealings between Atlantic Refining Company and the Firestone and has nothing to do with Goodyear; therefore, is not material.

Hearing Examiner Kolb: Exhibits 293-C and -D will be received into evidence subject to the motion to strike 723 by Goodyear.

(The documents referred to were marked for identification as COMMISSION'S EXHIBITS 293-C and 293-D and were received in evidence.)

Mr. Thompson: May we withdraw these two documents from Atlantic's files so that we may substitute photostatic copies? That may be done?

Hearing Examiner Kolb: Yes.

Proceed.

Mr. Kelaher: I would like to recall Mr. Hinderscheid to the stand, please.

Mr. Thompson: Off the record for a moment, sir?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

W. F. HINDERSCHIED resumed the stand and testified further as follows:

Mr. Kelaher: Before questioning Mr. Hinderscheid further, Mr. Examiner, there were three exhibits offered into evidence yesterday, marked for identification yesterday, identified as CX-290-A through I, CX-291-A through C, and 292-A through C. Counsel for the respondents asked for an opportunity to examine the documents before deciding whether there would be any objection.

724 I now offer the documents into evidence—or at least

I offer that portion of the documents which relate to AR accounts, Atlantic Refining accounts, and not to that portion of the documents which relate to DAR accounts.

Mr. Thompson: I object to any partial offer of the exhibits. I have no objection if they are offered as they appear.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 290-A to -I, 291-A to -C, and 292-A to -C.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 290-A through -I, 291-A through -C, and 292-A through -C, were received in evidence.)

Mr. Kelaher: Your Honor, at this time I would like to have the following documents marked for identification:

For identification as CX-294, a list of Lee—

Hearing Examiner Kolb: You have already used 294 on your statement for Mr. Matthews this morning.

Mr. Kelaher: I'm sorry. Thank you.

I would like to have marked as CX-295 a list which is a list of Lee factory branches as of January 1, 1950.

(The document referred to was marked for identification as Commission's Exhibit 295.)

Mr. Kelaher: For identification as Commission Exhibit 296 a list of Lee factory branches set up in the Atlantic Refining Company marketing area subsequent to January 1, 1950, together with the month and year each branch began operations.

(The document referred to was marked Commission's Exhibit 296 for identification.)

Mr. Kelaher: As Commission Exhibit 297-A and -B the names and positions of Lee personnel referred to in Items 1 to 19 inclusive of Specification I of the subpoena duces tecum served upon Mr. Hinderscheid.

(The documents referred to were marked Commission's Exhibits 297-A and 297-B for identification.)

Mr. Kelaher: And 288-E—

Hearing Examiner Kolb: You have used 288—do you mean 298?

Mr. Kelaher: Excuse me, there is a reference made in CX-288 series to a memorandum and Mr. Hinderscheid was requested to furnish that memorandum so I think in order to keep the exhibits in proper order it should properly go with the 288 series.

Hearing Examiner Kolb: All right.

Mr. Kelaher: I call your Honor's attention to Commission Exhibit 288-C, the fourth paragraph of that letter from Mr. Hinderscheid to Mr. Dwight Colley of Atlantic, he states: "I am attaching a copy of the memorandum 726" etc., and this CX-288-E is the memorandum referred to.

(The document referred to was marked Commission's Exhibit 288-E for identification.)

Mr. Kelaher: I now offer Commission Exhibits for identification 295, 296, 297-A and 297-B, and 288-E into evidence.

Mr. Thompson: At the moment, sir, I am wholly con-

fused about what the exhibits are because I couldn't hear Mr. Kelaher. I will have to check with him.

If your Honor please, Atlantic has no objection to the CX-295, CX-296, CX-297-A or 297-B. So far as 288-E is concerned I have no objection if the offer is limited to the purpose of showing what complaint was registered by Lee with Mr. Colley of the Atlantic. If, on the other hand, the document is offered for the purpose of proving the facts stated therein, such facts are obviously hearsay and in so far as the author of the document, Mr. McCreery is concerned, and in a number of instances involve double or triple hearsay.

Mr. Correa: If your Honor please, the respondent Goodyear does not object to any of the proffered exhibits with the exception of Exhibit 288-E for identification and that is objected to by Goodyear on the ground that it appears from the face of the exhibit that this has to do wholly and solely with dealings between Atlantic and Firestone to which Goodyear was not only not privy but was in 727 deed a stranger and it is immaterial and irrelevant in so far as any issue in this case concerning the respondent Goodyear Tire & Rubber Company is concerned.

Hearing Examiner Kolb: That applies only to 288?

Mr. Correa: Only to that one, if your Honor please. The others we have no objection to.

Hearing Examiner Kolb: May I see 288-E, please?

(The document was handed to the Examiner.)

Hearing Examiner Kolb: The document 288-E will be received in evidence subject to the qualifications specified by counsel for Atlantic and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked for identification COMMISSION EXHIBIT 288-E, was received in evidence.)

Mr. Kelaher: Your Honor, would you please state the

qualification or have the qualification reread by the reporter?

Hearing Examiner Kolb: All right, will the reporter read the qualification?

(The reporter read the following statement:

"Mr. Thompson: * * * If, on the other hand, the document is offered for the purpose of proving the facts stated therein, such facts are obviously hearsay. 728 and in so far as the author of the document, Mr. McCreery is concerned, and in a number of instances involve double or triple hearsay.")

Hearing Examiner Kolb: There being no objection to documents 295, 296 and 297-A and -B they will be received in evidence.

(The documents referred to, heretofore marked for identification COMMISSION EXHIBITS 295, 296, 297-A and 297-B were received in evidence.)

Direct Examination by Mr. Kelaher (Resumed).

Q. Mr. Hinderscheid, will you please state Mr. McCreery's position with the company?

A. Now or then?

Q. E. W. McCreery.

A. At what time?

Q. As of July '51.

A. He's Vice President and Regional Sales Manager, what is known in our organization as Region Number 4.

Q. And where was he located?

A. He was located in the General Offices, Lee Rubber & Tire Corporation, Conshohocken.

Q. And was he in charge of the regional offices in various parts of the country?

A. He was in charge of branch offices in certain 729 parts of the country.

Q. And were certain of such branch offices located in Pittsburgh, Altoona and Erie, Pennsylvania?

A. Yes.

Q. And the information stated by him in CX-288-E was based on reports from those branches, is that correct? (Handing document to the witness.)

A. I assume that they were, but I have no way of telling.

Q. That would be the normal operation procedure, wouldn't it?

A. The normal procedure was for him to get this information from the branch manager and the branch manager probably in turn received the information from the sales representative covering that particular territory.

Q. I see.

And that information contained in CX-288-E would be based on that procedure, is that correct?

A. That's right.

Mr. Kelaher: Your Honor, on the basis of Mr. Hinderscheid's statement we submit that Commission Exhibit 288-E is qualified for introduction into evidence as a record made in the regular course of business and should be admitted without qualification.

Hearing Examiner Kolb: This appears to be a report from Mr. McCreery as to information that came to 730 him from other sources and reported to Mr. Hinderscheid. I think that needs the qualification.

Mr. Kelaher: It is a report based on salesmen coming under the jurisdiction of Mr. McCreery.

Mr. Thompson: Are you through, Mr. Kelaher?

Mr. Kelaher: Yes. Does Mr. Thompson have anything further to say about CX-288-E or have you ruled finally on it?

Mr. Thompson: I understood your Honor ruled.

Hearing Examiner Kolb: I ruled on it.

By Mr. Kelaher:

Q. Mr. Hinderscheid, I just want to ask you whether or not it would be possible to get the names of the salesmen who were in the Wilmington Branch in April 1950? I'm referring to Commission Exhibit for identification 275-A through -H and asking if any of those salesmen are still with Lee, if you know?

A. To the best of my knowledge, why, none of them are with us today.

Q. None of them?

A. No.

Q. And could you furnish us not right now but within the next day or so with the names of the Lee salesmen who were in the Wilmington branch at that time?

A. 1950?

Q. April 1950.

731 A. I don't know whether I can get it within the next day or so because you are going back in the records seven to eight years and I don't know just how available those records are.

Q. Say before Friday?

A. Yes. I think we could get them within two or three days.

Q. Thank you.

Mr. Kelaher: Your Honor, I just would like that the record to show that I do have—we do have an objection to the introduction of CX-288-E with the qualification appended.

Hearing Examiner Kolb: Do you want to withdraw it?

Mr. Kelaher: No, I just want to have the objection noted in the record.

Hearing Examiner Kolb: All right.

Mr. Kelaher: We have no further questions of Mr. Hinderscheid.

Mr. Thompson: May I have a second to confer with counsel, sir?

Hearing Examiner Kolb: All right.

Cross-Examination by Mr. Thompson.

Q. Mr. Hinderscheid, I was not able, sir, with the documents which I have read with some care to determine the extent to which your organization back in 1950 and 1951 operated through distributors as distinguished from your company branches.

732 Did you at that time have a number of independent distributors around the country?

A. Yes.

Q. And you do at the present time also, do you not, sir?

A. Yes, sir.

Q. The independent distributors—take Philadelphia, if I may for an example—are today directly soliciting with oil company service stations, are they not?

A. Distributors?

Q. Yes.

A. Our distributors?

Q. Yes.

A. Yes, I would imagine so.

Q. And were they doing that—

Mr. Kelaher: (Interposing.) Your Honor, I move the answer be stricken unless he knows of his own knowledge. He said he imagines so.

Hearing Examiner Kolb: Read the question and answer.

(The reporter read the following questions and answers:

“Question: The independent distributors—take Philadelphia, if I may for an example—are today di-

rectly soliciting with oil company service stations, are they not?

733 "Answer: Distributors?

"Question: Yes.

"Answer: Our distributors?

"Question: Yes.

"Answer: Yes, I would imagine so.")

Hearing Examiner Kolb: The answer may stand.

By Mr. Thompson:

Q. Of course, sir, you qualified your answer because you wouldn't know how your distributors were soliciting?

A. I wouldn't have any way of knowing that?

Q. They don't report to you who their customers are?

A. No.

Q. Now, were your independent distributors operating in the same way in 1950 and 1951?

A. Yes, they were soliciting dealer business.

Q. That would have been so in Newark and Erie, Wilmington, Baltimore, in fact, in places anywhere in the country, would it not?

A. Yes.

Q. So that referring, sir, to the portions of the Exhibits 290, 291 and 292 which refer to sales in various regions—

A. Yes, that's right.

Q. To Atlantic accounts, you were, I assume, merely reporting the sales which had been made by your own factory branches, is that not so?

734 A. That's right.

Q. And you would not either in 1950 or 1951 or today know the extent to which the various independent distributors in the various regions were also selling to Atlantic accounts?

A. It wouldn't be possible for us to know.

Q. It would be impossible to know.

Mr. Thompson: Thank you very much, sir; that's all I have.

Mr. Correa: I have nothing, sir.

Hearing Examiner Kolb: Further questions?

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That's all, Mr. Hinderscheid. Thank you.

(Witness excused.)

Mr. Dias: I call Mr. McCandless.

ROBERT H. McCANDLESS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Mr. McCandless, will you state your full name and spell your last name for the reporter.

A. Robert H. McCandless—Mc capital C-a-n-d-l-e-s-s.

Q. And your business address?

735 A. 8 East Ninth Street, Chester, Pennsylvania.

Q. And the name of your company?

A. Auto Parts and Radiator Company.

Q. What type of business is Auto Parts and Radiator, Mr. McCandless?

A. In the automotive replacement parts and equipment line.

Q. And does that include TBA products?

A. And TBA also.

Q. Do you handle tires?

A. Yes, sir.

Q. You do handle tires?

A. Yes, sir.

Q. What brand tire do you handle?

A. Inland tires.

Q. And your batteries?

A. Delco batteries.

Q. And can you name some of the more common accessories such as filters?

A. AC products, a complete line, Alemite CD-2.

Q. How about belts and hose?

A. Gates belts and hose, National Carbon products.

Q. What is the trade area of your company, Mr. McCandless?

A. We cover from the Delaware River as far as the Lincoln Highway.

Q. Lincoln what?

736 A. Lincoln Highway, and from the Philadelphia area as far as Delaware.

Q. Does the company employ salesmen?

A. Yes, sir.

Q. How many of them?

A. Three.

Q. And what kind or what class of customers are solicited by the company?

A. Garages, independent garages, service stations, fleets, industrial plants, car dealers.

Q. Does the company have delivery trucks?

A. Yes, sir.

Q. How many?

A. Approximately five.

Q. Five?

A. Five. Yes, sir.

Q. How are your salesmen compensated, salary or commission?

A. Strictly commission.

Q. Now, how long have you been employed by the company, Mr. McCandless?

A. Eight years.

Q. And of that time, have those eight years been as a salesman?

A. Yes, sir.

Q. What is your sales territory?

737 A. The Western part of Chester and as far as the Delaware State Line.

Q. Do you solicit the same type of customers as your company as a whole solicits?

A. Yes, sir.

Q. Or do you specialize in any one particular—

A. (Interposing.) No.

Q. You just solicit them all. I take it then, you solicit service stations?

A. Yes, sir.

Q. Are there any Atlantic service stations among your territory?

A. I have 12 in my territory.

Q. And do you solicit all of them?

A. Approximately seven.

Q. Approximately what?

A. Seven.

Q. What about the other five?

A. Well, I don't call on them any more.

Q. When did you last call on them?

A. Approximately two years ago.

Q. And why did you discontinue it?

A. Couldn't get any business out of them.

Q. These 12 stations in your territory, do they handle TBA products?

738 A. Yes, sir.

Q. Do you recall what brands they carry?

A. In the Chester area it's Goodyear.

Q. Do you sell in another area too?

A. Just one account that I call on in the Delaware area, he carries Firestone.

Q. Now, these seven that you call on, how often do you call on them?

A. Approximately every two weeks.

Q. And can you tell us what you sell to them?

A. A few oil filters, occasionally a few spark plugs, and small pieces of equipment, and some ignition parts.

Q. I see. By "equipment" is that what it known as hard parts?

A. Well, equipment that they use in the service stations.

Q. Oh, I see, service station equipment.

Now, these five, do you attempt to sell or do you solicit their business on your batteries? Do you attempt to sell them batteries?

A. No.

Q. You do not?

A. No, sir.

Q. Is there any reason for that?

A. Well, I couldn't sell them so I stopped talking about them.

739 Q. That is true with these five or seven stations that you are selling to now, is that correct?

A. Yes, sir.

Q. Or is that true of the five that you stopped calling on?

A. Out of the five I'd say all but one.

Q. All but one is what?

A. That I sell batteries to. That's a rare occasion, I mean, I don't push after them.

Q. Well, what is it that you attempt to sell mainly to those stations, then?

A. Ignition and brake parts.

Q. How about chemicals?

A. Chemicals, some chemicals and some polishes, which is a chemical also.

Q. Are you familiar with the Bert Rehill Atlantic Station?

A. I haven't called on him for a couple of years.

Q. Do you know where they are located?

A. Ninth and Kerlin Street.

Q. In where?

A. Chester, Pennsylvania.

Q. When was the last time you called on them?

A. Well, approximately two years I imagine.

Q. Three years ago?

A. Two years.

Q. Two years. Did you call on that station regularly?

740 A. Pretty regular for a while.

Q. For how long a period?

A. Maybe—approximately two years.

Q. For a year?

A. About two years.

Q. About two years?

A. Yes.

Q. Did you make any sales to that station?

A. I think I made one sale—one or two sales.

Q. And do you have—

A. Myself, actually myself.

Q. I see.

What do you mean by that?

A. Other times, you know they pick it up or call in the store and we give them delivery service on that.

Q. Do you get credit on sales of that kind?

A. Yes, sir.

Q. Do you know how often you called on that station during the year that you were calling on them or the two years?

A. Can I look at this record here?

Q. Are those your company records of calls and sales?

A. Yes, sir.

Q. Yes.

A. Well, I don't have the number of calls here, 12 times during one year.

741 Q. Which year was that?

A. 1954.

Q. And do you have a record of the total amount of sales?

A. \$13.75.

Q. And do you recall what the products were?

A. No, I don't. Prior to that, 1953, there was one sale of \$20.40.

Q. Do you know how often you called on him during that year?

A. No, there's no record here on it.

Q. Does the Bert Rehill station handle tires, batteries and accessories?

A. Yes, sir.

Q. What brand do they advertise on and about the station?

A. Goodyear, I believe.

Q. Now, are you familiar with the John Rehill Station at Fourth and Highland in Chester?

A. Yes, sir.

Q. Do you sell to that station at this time?

A. I haven't called on him since '54. In other words, I stopped calling on him in 1954, the end of '54.

Q. Why did you stop calling on him?

A. I couldn't do too much business with him.

Q. Did you sell him anything in 1954?

A. \$68.67.

Q. And do you know how often you called on him
742 during that year?

A. I only made seven calls on him in that year.

Q. Do you have any information on other stations in your sales territory, Atlantic stations?

A. Yes, sir.

Q. Before we get off the John Rehill station, will you tell us whether or not he handles TBA?

A. Yes, sir.

Q. He does. And what brand of TBA does he handle?

A. Goodyear.

Q. Now, do you have other instances of Atlantic stations in your sales territory that you have called upon?

A. Pardon me?

Q. Do you have other instances of Atlantic stations in your sales territory that you have called upon?

A. Yes, sir.

Q. Would you name them, please?

A. Do you want the amounts or the number of calls?

Q. First I would like to know the name and address of the Atlantic station.

A. Buckingham's Atlantic, Second and Lloyd Streets in Chester.

Q. And do you sell to that station at this time?

A. No, sir.

Q. When was the last time you sold to that station?

743 A. I actually didn't sell him anything, he called the store and ordered it which I get credit for. In 1955 I made 8 calls for \$211.44 worth of business.

Q. A total of eight calls in one year?

A. Yes, sir.

Q. And that was your total annual business?

A. That was a part of a year because I didn't have him for the full year of 1955.

In 1956 there was ten calls for \$381.28.

Q. Did you sell him any batteries?

A. No, sir.

Q. Do you recall what it was that you sold to that station?

A. I imagine brake shoes would be the most important thing, brake shoes and these car rugs that you put on the floors and stuff like that.

Q. Car what?

A. Car rugs.

Q. Buckingham Atlantic Station, is that the name of it?

A. Yes, sir.

Q. Do they carry TBA?

A. Yes, sir.

Q. And what brand TBA do they carry?

A. Goodyear also.

Q. Do you have any other specific instances?

A. Village Green Atlantic Station.

744 Q. Village Green?

A. Village Green Atlantic, that's Concord and Scheivert Roads in Village Green, Pennsylvania.

Q. Now, do you sell to that station at this time?

A. No, he's out of business now; that is he went into another station, I believe, as of last Thursday, I believe he's not there any more.

Q. Well, up until the time that he closed out did you do any business with him?

A. Yes, sir.

Q. Can you tell us how much?

A. 1956, 19 calls, \$786.19.

Q. And how about 1955?

A. Now, that was a new account that I took over. I don't believe he was there in '55. I couldn't say for sure because it is just a new account that I took over from another salesman in 1957—15 calls, \$934.52.

Q. Do you recall what it was that you sold to that station?

A. Ignition, brakes, brake parts.

Q. Any batteries?

A. No batteries.

Q. Filters, chemicals?

A. A few chemicals.

Q. How about filters?

A. No filters.

745 Q. Did he handle TBA in that station?

A. Yes, sir.

Q. What brand TBA did he handle?

A. Goodyear.

Q. Do you have any other instances of stations that you have sold to?

A. S. K. Watson's Atlantic Station, Boothwyn and Meeting House Road, Boothwyn, Pennsylvania.

Q. Have you sold to him this year?

A. Yes.

Q. Is he one of your regular customers?

A. Since the first of this year.

Q. I see. And what do you sell to him?

A. Gates belts, hoses.

Q. How about batteries?

A. He does buy some batteries occasionally on call only. He doesn't stock them.

Q. Do you have any idea of the volume of business with him?

A. For 1957, \$33.81.

Q. \$33.81?

A. Yes.

Q. How about 1956?

A. '56, \$161.94.

Q. Do you know how many calls you made on him that year?

A. This year I have only called on him since Janu-
746 ary, but there were 22 calls made on him in 1956.

Q. And this year do you know how often you have called on him?

A. About every two weeks.

Q. Does he handle TBA in his station?

A. I'm not too sure, I don't think he does. He doesn't carry a very large stock.

Q. Does he own his own station do you know?

A. Yes.

Q. How about this Village Green station, does that gentleman own his own station?

A. Village Green Atlantic?

Q. Yes.

A. No, that was a leased station.

Q. Do you have the names of any other of your customers there?

A. Harry and Jim's, Naamans Creek Road and Meeting House Road. That's in Ogden, Pennsylvania.

Q. What do you sell to him?

A. He's a pretty new station, so this year there is \$104.93.

Q. When did he open up, do you recall?

A. I don't recall, someone else had that account until just recently.

Q. Do you recall what it was you sold to him?

A. A majority of the sales here were parts that he 747 called store and had delivered.

Q. What type parts? Is this hard parts?

A. I really couldn't say what they were.

Q. I see.

A. Minor parts for repairs, I imagine, like brake hoses and maybe a set of brake shoes.

Q. Do you have any other accounts which you sell to? Atlantic accounts?

A. Brookhaven Atlantic Station, Middletown Road, Brookhaven, Pennsylvania. Just for 1957 we have \$50.

Q. You were not selling to him prior to '57?

A. I have only had him since the first of the year.

Q. Did some other salesman—

A. Some other salesman called on him.

Q. From your company, is that correct?

A. Yes, sir.

Q. Who would that be, do you know?

A. Quinton Siefert, he isn't with us any more.

Q. Do you recall what those sales consisted of, this 1957, \$50?

A. The \$50, that was for car bugs.

Q. Did you say only?

A. That's all, yes. You see, when they call in the store we don't know what they buy, actually, because our truck delivers it out to them. When we write it on an order 748 pad we naturally know what we are selling him.

Q. You get a commission on his purchases anyway?

A. On anything that he buys.

Q. Have you given me your seven Atlantic stations or do you have others?

A. Well, there is one new one here, but he just opened recently.

Q. How recently did he open?

A. I'd say about two months ago.

Q. You have called on him, have you?

A. Yes, sir.

Q. How recently?

A. In May. I made one call on him in May and one on June the 7th, and that's the last time I called on him.

Q. Have you sold him anything?

A. Ignition.

Q. Can you place the date of his opening a little more closely, please. You say about two months ago.

A. I'm pretty sure it's some time in May.

Q. Some time in May?

A. Yes.

Q. Well, do you know how soon after he opened up you called upon him?

A. I'd say about two weeks.

Q. Did you offer him your line of batteries and accessories?

749 A. No, I didn't.

Q. To sell?

A. No.

Q. Why not?

A. Well, at that time he was pretty well tied up and he asked me to call back again. When I called back again that's when I sold him ignition, but I just stated where we were located and the type of services that we were performing and so forth and it's pretty hard to get everything over the first time, especially when the man is just new.

Q. Did he have any TBA in the station when you called on him?

A. Yes, sir.

Q. What brand was that?

A. Goodyear.

Q. Would you mind repeating the address of that station, please?

A. Castagna's Atlantic Station, Conchester Road, RFD #1, Boothwyn, Pennsylvania.

Q. Did you tell me you had one Atlantic station over in Delaware in your territory in Delaware?

A. Stan's Atlantic Station.

Q. I don't recall that you gave us a name, but didn't you tell me there was in your Delaware territory one Atlantic station?

750 A. Just one, that's it.

Q. And which one is he?

A. Stans—S-t-a-n-'s—Atlantic Station.

Q. Where is he located?

A. Naaman's and Marsh Roads, Wilmington, Delaware.

Q. And what do you sell to him?

A. Small pieces of equipment like a jack or water buckets and stuff like that and a few chemicals.

Q. Do you have any idea how often you call on him?

A. About every two or three weeks.

Q. Do you have any idea of the volume of purchases from you?

A. In 1955, \$122.52.

Q. Do you know how often you called on him that year?

A. About 20 times that year?

Q. Twenty times?

A. Twenty times.

Q. Did you do business with him in 1956?

A. \$268.86.

Q. Do you recall how often you called on him in that year?

A. They have 40 calls down here, but I think that's an error, 40 calls, that's a lot of calls in one year.

In 1957, \$57.64.

Q. \$57 what?

A. \$57.64.

751 Q. Now, do you know how often you called on him that year?

A. Seven times this year.

Q. Do you have any idea what you sold him this year or did you tell us—how about '56?

A. '56, no, I don't recall what that was. I don't recall what that was, sir.

Q. Does he handle TBA products in that station?

A. Yes, sir.

Q. Do you recall what TBA products they are?

A. Firestone.

Q. Who are Goodyear suppliers in your territory, do you know, Mr. McCandless?

A. Edward Parris.

Q. And does he cover—is he the supply point for all the stations in your territory including that Delaware? No, not the Delaware.

A. Not the Delaware station.

Q. Do you know who the supplier—who the Firestone supplier is in the Delaware area?

A. No, it's out of Wilmington, Firestone out of Wilmington is who handles him.

Q. Was it the Village Green Atlantic Station at Concord and Scheivert that is closed, is that the one you told me?

A. Well, it's not closed, the man that was in there he took another station, I believe, he's taken another 752 station and there is a new operator in it.

Q. But it's still an Atlantic station?

A. Yes, it's still an Atlantic station.

Q. And the man that was in there, what was his name, do you recall?

A. Edward Zoba.

Q. Has he opened another Atlantic station now?

A. He's opened a Sinclair station.

Q. Did you ever attempt to sell Mr. Zoba your batteries?

A. On some occasions, yes, sir.

Q. Did you sell him any?

A. No.

Q. How about your chemicals?

A. I tried to sell him but wasn't very successful.

Q. Filters?

A. No.

Q. Did you tell me that you made sales amounting to about \$786 in 1956 to that station and \$932 in 1957, was that the station?

A. Yes, sir.

Q. What did those sales consist of?

A. Mostly brakes, ignition, and maybe a small piece of equipment—brake parts.

Q. What type delivery service do you offer your customers?

A. Well, if it's an emergency we try to send it out 753 immediately within, oh, as long as it takes to get it on the truck if it's an emergency delivery. But we do have scheduled deliveries in the morning and in the afternoon. That is for more or less stock orders.

Q. I see. And is that daily?

A. Every day. Up until 12:30 on Saturday.

Mr. Dias: That's all.

Cross Examination by Mr. Ballard.

Q. Mr. McCandless, during your testimony you have been refreshing your recollection with some records in front of you, isn't that right?

A. Yes, sir.

Q. May I see those records, please?

(The witness handed the document to counsel.)

Q. You also have a letter there from the Federal Trade Commission?

A. Yes, sir.

Q. May I see that, please?

Mr. Dias: I would like to see the records myself, I haven't seen them either.

(The documents were handed to counsel by the witness.)

Mr. Correa: Are these made up from some record kept in your office?

754 The Witness: Yes, sir.

Mr. Ballard: We have no questions, your Honor.

Mr. Correa: I have no questions, if your Honor please.

Mr. Kelaher: May we have a recess?

Hearing Examiner Kolb: That's all, Mr. McCandless, thank you.

(Witness excused.)

Hearing Examiner Kolb: We'll recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Connell to the stand, please.

CONRAD CONNELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your full name and address, Mr. Connell?

A. Conrad Connell, Six East Amhurst Road, Kenwood, Pennsylvania.

Q. And are you an employee of the Electric Storage Battery Company?

755 A. I am.

Q. And for how many years have you been with that company?

A. For twenty-eight years.

Q. Twenty-eight years. And could you briefly describe the positions you have held with that company during that time?

A. I assume you mean briefly.

I started as a salesman in the Industrial Division in 1929; in 1937 I was transferred to Automotive Sales as Senior Salesman in the Philadelphia Branch; in 1949 I moved to the General Offices as Supervisor of Exide Replacement Sales; about a year or two later the title was changed to

Manager of Exide Replacement Sales; in 1934 I was made Sales Manager of the Northeast Region of the Exide Automotive Division of the Electric Storage Battery Company. That is the position I hold today.

Q. Are you familiar with the history of the—does your company manufacture the Exide brand of batteries?

A. We do.

Q. And do you also manufacture other brands of batteries either through the parent company or subsidiaries if you have subsidiaries?

A. Through the parent company; yes, sir.

Q. And what brands of batteries do you manufacture?

A. Well, as a proprietary brands we have Exide, Willard, and Grant in addition to which we manufacture 756 a number of other brands so-called private brands. I'm not sure that I can name them all.

Q. Name some.

A. We manufacture Atlas, Ford, Firestone, Mobile, I think of the important ones that would cover it.

Q. Thank you.

At one time did your company have a contract with Atlantic Refining Company in connection with the sale of Exide Batteries?

A. We did.

Q. And would you please state when that contract originally went into effect?

A. We had initially a contract on what I would term a local basis, on a region basis with the Atlantic Refining Company which I believe started in 1937.

Q. What do you mean by a local regional basis?

A. Only for the sale, it was an. I would say a trial balloon, I believe the initial start for the sale of batteries by the Atlantic Refining Company. That is my impression of it.

Q. And do you mean that certain areas were designated in which you had this trial run, so to speak?

A. I mean that we had a contract with the Philadelphia Region of the Atlantic Refining Company for distribution by them in that region.

Q. And then later was that contract expanded to 757 cover other regions of Atlantic?

A. Later we signed a contract for the national distribution; that is in the entire area in which Atlantic Refining operated.

Now, they didn't go into all the areas at one time but the contract was on a basis of their distributing Exide batteries throughout their operation.

Q. When did that contract go into effect, approximately?

A. I'll tell you, I believe—1949.

Q. 1949?

A. 1949, that's correct.

Q. And prior thereto, weren't you distributing Exide batteries for many years into various Atlantic marketing regions?

A. Into Atlantic marketing regions?

Q. Yes.

A. Yes, we were.

Q. I'm not quite clear on your reference to 1949. You stated that your original contract with Atlantic was in 1937.

A. That's correct.

Q. Now—and that was confined to the Philadelphia region or was that the Philadelphia-New Jersey Region of Atlantic?

A. I can't from memory define the boundary territories, but it was what Atlantic Refining considered their Philadelphia region.

Q. Now, after 1937 do you recall the dates when 758 you expanded the program in so far as Atlantic was concerned?

A. Well, the expansion would have taken place from the signing of the 1949 contract.

Q. At any time after 1937 did you enter into a contract with Atlantic to sell Exide batteries for distribution in any area other than the Philadelphia Region?

Mr. Thompson: I didn't understand the question.

The Witness: Mr. Kelaher, I have to correct a statement I made.

The contract on a national basis was made in 1945 rather than 1949.

By Mr. Kelaher:

Q. And from 1945 on you sold Exide batteries under a contract with Atlantic Refining Company for distribution to Atlantic outlets, is that correct?

A. That's correct.

Q. And would you just state briefly the flow of distribution of the Exide batteries to Atlantic outlets, all going to Atlantic outlets?

A. Well, Atlantic Refining were one of a number of distributors of Exide batteries in the territory. Our policy is to sell to distributors who in turn, and one of which was Atlantic Refining Company, sold to service stations, car dealers, any outlet, any retail outlet, consumer outlet for the sale of storage batteries.

759 Q. Well now, with reference to the batteries sold to Atlantic solely, were they physically handled by Atlantic and put in warehouses for redistribution or just how did that operate?

A. Just as you have described it and in exactly the same way as every other distributor; they bought from us at a standard distributor price, accepted delivery, billing, paid their bills, made their own deliveries.

Q. You dealt directly with Atlantic and not with Atlantic stations, is that correct?

A. That's correct.

Q. Now, Mr. Connell, you are here in answer to a subpoena duces tecum, are you not?

A. Yes, sir.

Q. And have you examined the documents referred to in Specification I of the Specifications attached to your subpoena?

A. Yes, I have.

Q. Are they true and accurate copies of documents in the files of the Electric Storage Battery Company?

A. They are.

Mr. Kelaher: Your Honor, at this time I would like to ask counsel for respondents if they will concede the authenticity of the documents mentioned in Specification I?

Mr. Thompson: If Mr. Connell says they are from 760 the files of the Electric Storage Battery, of course we will concede it.

Mr. Kelaher: We would also like to ask counsel if we may substitute photostats for the originals so that the originals may be kept in the files of Electric Storage Battery Company?

Mr. Thompson: Certainly.

Mr. Correa: No objection.

Mr. Kelaher: Thank you.

Your Honor, I think if agreeable to you and to counsel I will identify all the documents at one time.

Hearing Examiner Kolb: I think that would be better.

764 Mr. Kelaher: I offer Commission's exhibits 298 through 313 into evidence, your Honor.

Mr. Correa: If your Honor will give us a moment, I think we may be able to handle these all in one lot.

Hearing Examiner Kolb: All right.

Mr. Correa: If your Honor please, with respect to the proffered exhibits, we have no objection to the following:

298, 301, 302, 303, 304, 307, 308, 309, 310 and 311. Exhibits for identification marked 299, 300-A-B, 305-A-B, 306-A-B, 312 and 313 are objected to, if your Honor please.

Hearing Examiner Kolb: The documents not objected to will be received in evidence: Commission's exhibits 298, 301, 302, 303, 304, 307, 308, 309, 310 and 311.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 298; 301; 302; 303; 304; 307; 308; 309; 310; and 311 for identification were received in evidence.)

768 Mr. Thompson: If your Honor please, with respect to 300, A and B, the objection of Atlantic Refining Company is a qualified one. I have no objection to the admission of this report provided the second sentence on 300-A relating to one Joseph Wash be received merely to indicate a state of mind of Mr. Wash and not to prove the fact stated.

On exhibit 300-B, the same qualification in my view applies to the second sentence of the statement referring to one Joseph Marino, that is to say, I would have no objection to it as state of mind evidence provided it is limited to that particular subject.

Mr. Correa: We associate ourselves with the statement just made by Mr. Thompson, if your Honor please.

Mr. Kelaher: Your Honor, I would like to call your attention to the fact that on Commission's exhibit 300-A and -B, they are willing to accept the credibility of the document excepting as to the statement made by Joseph

769 Wash, which indicates—which states that “he advised us that he has to stock Goodyears since this is a leased station,” and there is a statement with respect to Joseph Marino, 300-B, that they advise that the majority

of the batteries they sell are still Exides, but do not stock any number because of the constant pressure being exerted by the salesmen for the Atlantic Refining Company.

If they are willing to accept the other statements in the document, it is quite surprising that they would pick out two of the numerous reports here and qualify to that extent.

Mr. Thompson: That is the most naive remark I have heard for a long time, sir. It isn't surprising in the least. It is certainly what you would expect of me, if you think I am a good ~~pastor~~ person.

Mr. Kelaher: Clearly, if it has credibility as to 10 of them, it should have as to the other 2 and I think there is nothing naive about that. I think that is a naive objection.

Hearing Examiner Kolb: I think this comes within the Danbury-Hatters case and Lawlor vs. Loewe, in which the testimony as to the statements made by various parties was admitted as to the state of mind and not to prove the truthfulness of the statements. And I think this is certainly within that, and will have to be received on that basis and no other.

770 Mr. Kelaher: . But as to all of them, not to two of them?

Hearing Examiner Kolb: The whole thing is received on the basis I just stated.

(The document referred to, heretofore marked as COMMISSION'S EXHIBIT 300-A and -B for identification was received in evidence.)

Mr. Thompson: I have no objection, sir, except as stated. Mr. Kelaher offered the document. My objection was a qualified one. So far as I am concerned, the rest of the document is in evidence, for any purpose anybody wants to use it for.

Mr. Kelaher: As I understand the Examiner's statement, the ruling applies to the entire document, isn't that correct?

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Mr. Connell, I show you Commission's exhibit for identification 305-A and -B, and ask you whether you are the Mr. Connell who prepared that memorandum and forwarded it to Mr. R. Whitehurst?

A. That is correct.

Mr. Kelaher: Your Honor, I offer Commission's Exhibit 305-A and -B into evidence.

Mr. Correa: If your Honor please, we object to exhibit 305. This is a memorandum in which this witness purports to set forth the substance of a telephone call he had 771 from somebody connected with Atlantic Refining concerning a decision made by the top management of Atlantic Refining.

Now we submit, if your Honor please, that this testimony, if it were offered in the proper way and there is no reason shown why, with the witness sitting in the witness stand, his memorandum of the fact is offered rather than his testimony, except perhaps that his testimony would be clearly inadmissible and it is hoped that the memorandum on some theory or other might be used as a device for smuggling what would otherwise be inadmissible into the record. And we object to that, if your Honor please.

Mr. Kelaher: Mr. Examiner, I would like to be heard in answer to counsel's statement at your convenience.

Hearing Examiner Kolb: All right.

Mr. Kelaher: Mr. Examiner, this was a document made on February 14, 1951; it was made contemporaneously with the conversation that this gentleman had with Mr. Heidman, and he is available for—

Hearing Examiner Kolb: (Interposing.) You have the witness on the stand, and he didn't say anything about that. I think you ought to ask the witness a few questions.

By Mr. Kelaher:

Q. Mr. Connell, would you please state when this memorandum was drafted, the date when it was drafted?

A. Well, I think that is quite clear, it is dated 772 February 14, 1951, and I state that it was written after conversation, telephone conversation that same day.

Q. With whom?

A. Mr. S. J. Heidman.

Q. And he was with which company?

A. TBA Manager of the Atlantic Refining Company.

Q. And the memorandum was drafted the same day?

A. The same day.

Q. And this recounts the conversation you had with Mr. Heidman, is that correct?

A. That is correct.

Mr. Correa: Is this being offered as past recollection recorded, may I inquire, because if so, I submit that no proper foundation has been laid, and if not, I must confess as to being at a complete loss as to the theory on which it is offered.

Mr. Kelaher: You have the witness available for cross-examination.

Mr. Correa: But you have him available for direct examination.

Hearing Examiner Kolb: There appears to be no doubt the conversation took place. The witness says the conversation was held. I overrule the objection.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 305-A and -B for identification were received in evidence.)

773 Mr. Correa: May I add on behalf of the Respondent Goodyear, the further objection that the subject of the document and—or the conversation which it purports to set forth is hearsay. It is not a conspiracy case here and statements made by or on behalf of the Respondent Atlantic Refining Company are in no way and in no sense binding or admissible against Respondent Goodyear except pursuant to the proper rules of evidence, which this document transgresses in every particular, we respectfully submit.

Hearing Examiner Kolb: I have ruled on the objection.

Mr. Correa: May the record show that your Honor additionally ruled on the separate objection of Goodyear based on—

Hearing Examiner Kolb: (Interposing.) You make your objections before I rule, not after I rule.

There have been several occasions when that has been done. I have attempted to rule on these as fairly as I pos-
774 sents after I rule. That has been my position all the time in all these cases. If you want to object, make it before I rule.

Mr. Correa: If your Honor please, in this case—

Hearing Examiner Kolb: (Interposing) As far as I am concerned, I overrule your second objection.

Mr. Correa: Your Honor will appreciate I am in
774 some difficulty because many of these documents are objectionable as to both respondents on general grounds. They are additionally and independently objectionable as to the Respondent Goodyear on separate grounds that perhaps are applicable only to that Respondent, and sometimes it is necessary to amend that separate objection to preserve Goodyear's position.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. I show you Commission's exhibit for identification 306-A and -B, and ask you to state further, Mr. Connell, whose name appears at the bottom of that document?

A. Mine.

Q. Would you please state the purpose of that memorandum?

Mr. Correa: I object to a statement of the purpose of the memorandum, if your Honor please.

Hearing Examiner Kolb: Ask him what it is.

By Mr. Kelaher:

Q. Would you please state what the memorandum is?

A. The memorandum is addressed to Mr. R. Whitehurst, Vice President, signed by me, subject, "Atlantic Refining Company." This memorandum is in the form of a report to Mr. Whitehurst, our Vice President, indicating the steps which we planned to take to attempt to retain the business that has been flowing through the Atlantic Refining Company for the sale of Exide batteries.

775 Q. Now the date of that is February 22, 1951, is that correct?

A. That is correct.

Q. When was your contract with Atlantic cancelled?

A. The official written cancellation from Mr. Parks was dated February 23, 1951.

Q. And when did you receive the notification that it was going to be cancelled from Atlantic?

A. Unofficially, February 14.

Q. And this second memorandum was written eight days thereafter?

A. Eight days thereafter, yes.

Mr. Kelaher: Mr. Examiner, I now offer COMMISSION'S EXHIBIT 306-A and -B into evidence.

Mr. Correa: If your Honor please, I wish to state my objection now, when your Honor is ready.

Hearing Examiner Kolb: Just a minute, please.
All right.

Mr. Correa: If your Honor please, as to the defendant Goodyear, this document, 306-A and -B is objected to on the ground that, as to the Defendant Goodyear, this is rank hearsay. These are statements and declarations made by various personnel of the Atlantic Refining Company, who is our co-respondent in this case, but we are not charged in this case as being in any conspiracy with the Atlantic Refining Company, we are not charged with being in any other relationship which would make their 776 statements and declarations binding on us as an exception to the hearsay rule, and consequently, as to us, this is just a collection of rank hearsay, and your Honor will see that, if your Honor would note, for example, the second sentence of the memorandum which reads "Additional information has been received from the Atlantic Refining Company, and steps have been taken with our branches to insure our retaining the maximum possible share of this business."

And down at the beginning of the third paragraph appearing on 306-A, "Mr. D. T. Colley, Vice President and General Manager of the Atlantic Refining Company, has already requested their Purchasing Department to formally notify"—and so forth, to do thus and so.

The very next paragraph, still on 306-A, "Mr. Heidman is now preparing letters to go out over Mr. Colley's signature, one to all of their dealers and the second", and so forth, as to what they are going to do.

On 306-B, the first paragraph beginning on that page, "Mr. Colley has clearly indicated to Mr. Heidman"—now that is undoubtedly scuttle-but which Mr. Connell was getting from somebody in Atlantic Refining Company as to various things that that company was doing, and may or may not be admissible as against that respondent in this

proceeding; from that proposition I resign, Mr. 777 Thompson will handle that quite adequately, I am sure.

But as to Respondent Goodyear, I submit this without any showing of a basis on which the admissions, if they be that, of our co-respondent, can be taken as against us, ought to be ruled inadmissible and we further, if your Honor please, make a separate and independent objection on general grounds, that I have never in my court or even in an administrative proceeding—with all due respect to the alleged or supposed informality and perhaps laxity so far as the rules of evidence are concerned of the administrative process—I have never heard of a proceeding whereby a witness was called to the witness stand, sworn, and instead of being asked to testify, was shown documents of his authorship and asked to identify them as being of his authorship, and not even asked to say the statements made in the document were true and correct, lest the statements might go in in sworn form, and then that pitiable excuse for evidence is offered in lieu of the testimony of the witness, without any showing that the witness lacks recollection, that he needs his recollection refreshed, or that he is in any other manner incapable of testifying and on all of those grounds, if your Honor please, we object to the proffered exhibit.

Mr. Thompson: If your Honor please, I join in Mr. Correa's objection.

Hearing Examiner Kolb: His objection is to Good- 778 year, and not to Atlantic.

Mr. Thompson: Yes, sir, and I shall revise my statement by saying I thoroughly concur in Mr. Correa's reasoning as a former instructor of evidence in the University of Pennsylvania Law School.

I don't know of any rule of evidence which permits a man to write a memorandum up and then bring it into court and say, "Here, I want to testify, here is what I

wrote sometime ago, instead of having a memorandum which refreshes his present recollection, to which he can refer in the course of his testimony, or says he can't remember anything about it and it was all true when I wrote it and then it is admitted as past recollection.

As Mr. Correa says, that is the only way I know you can get these documents in which a witness writes.

Mr. Kelaher: Mr. Examiner, do you care to hear from counsel supporting the complaint?

Hearing Examiner Kolb: I want to hear from all of you before I rule and when you finish, I will rule, not before and not after.

Mr. Kelaher: I was never a professor in a law school on evidence, but—

Mr. Thompson: (Interposing) I thought that ought to be on the record.

Mr. Kelaher: (Continuing)—I do have some ability 779 to read and I think in Title 28, Section 1732 of the U. S. Code there is such a thing as records in the regular course of business. And that clearly says that a document prepared in the regular course of business, which this undoubtedly was, that records facts, contemporaneous in the event, were recorded, and I would like to call your Honor's attention to the fact that the Electric Storage Battery Company was vitally affected at that time. They had a contract in effect to supply Exide batteries to the entire Atlantic market, as of February 14, 1951, and the Electric Storage Battery Company, through Mr. Connell, was advised that that contract was no longer in effect and that the Goodyear Tire and Rubber Company had entered into a TBA sales Commission plan with Atlantic covering three regions and that the Firestone Tire and Rubber Company had entered into a contract covering TBA sales in these other marketing regions of Atlantic, the three regions.

Therefore this company was vitally affected, they took steps as stated by the witness to attempt to retain as much of the business as they possibly could by selling directly to Atlantic dealers and I certainly think it is relevant, material, and it has great credibility.

Mr. Correa: May I inquire of counsel supporting the complaint, if your Honor please, on what theory, if he has any theory, he thinks that hearsay declarations made 780 by Atlantic officials to this witness are admissible against the Respondent Goodyear?

Mr. Kelaher: I think the document speaks for itself. Mr. Connell prepared the document. I suggest you ask him.

Hearing Examiner Kolb: It has never been clear in my mind, the way this complaint is pleaded, as to whether or not this is a conspiracy or not; I never have been able to figure that out.

Mr. Correa: All I can say to that your Honor is it seemed to me from other complaints which I have read that when it is the intent of the Commission to charge conspiracy, they generally charge it, *ipso verbis*.

Certainly, if at this late stage in the matter we are now to be told that this is a charge of conspiracy, I shall have to plead surprise and take whatever remedies that may be available to me in light of being surprised by a change in theory on the part of counsel supporting the complaint when the case is well on its way through trial.

As a matter of fact, my attention has been directed to the fact, if your Honor please, that in a brief written by our learned friend supporting the complaint, in an interlocutory appeal to the Commission, earlier in this same proceeding, at page 13, the statement appears and I quote: "While the complaint does not charge a conspiracy, we do contend that the contemporaneous contracts entered into by Atlantic with Goodyear and Firestone were utilized 781 to divide the Atlantic market and constitute contracts

in restraint of trade within the meaning of Section 1 of the Sherman Act and as such are within the purview of Section 5 of The Federal Trade Commission Act."

That would appear to be a pretty—

Hearing Examiner Kolb: (Interposing) He was trying to say a conspiracy backwards there.

Mr. Correa: I am of the old fashioned school who believes that words mean what they say and when they say "While the complaint does not charge a conspiracy," I am old fashioned enough to take them at face value. Maybe they meant the opposite of what they said, George Orwell's 1984, but I am not that advanced.

Hearing Examiner Kolb: Well, Mr. Kelaher, this appears to me to be a memorandum written by the witness and if he said that certain things are proposed to be done, I am not quite clear from this whether or not they have been done. I sympathize with counsel for the respondent in raising the question with the witness on the stand of putting the document in which says that certain things are going to be done when you have the witness here and you can let him testify with reference to that document, or at least as to the correctness of what was or was not done.

Mr. Kelaher: May I be permitted to question him?

782 Hearing Examiner Kolb: Yes. He is called as a witness.

By Mr. Kelaher:

Q. Mr. Connell, let's start with the beginning of this document, and go down the line.

You state: "My letter of February 14 advised you of the Atlantic Refining Company's change in policy for the handling of TBA sales to the dealers." Is that a correct statement?

Mr. Thompson: I object to this form of questioning of this witness.

This document which is before him either does or does not refresh his recollection.

Mr. Kelaher: I am at quite a loss to understand what is wanted by counsel. First they accuse me of not asking him about the document, and when I start, then they object.

Hearing Examiner Kolb: The document is a memorandum and he can refresh his recollection. Let him refresh his recollection and testify as to the document.

By Mr. Kelaher:

Q. Does that first sentence refresh your recollection as to events that happened at that time?

A. Yes, it does.

Q. Would you please state in your own words what the import of that first paragraph is?

783 Mr. Thompson: That is objected to, sir. That is not the way to examine a witness on the stand in my experience.

Mr. Correa: I associate myself with that objection.

By Mr. Kelaher:

Q. You stated that it refreshes your recollection with respect to Atlantic Refining Company's change in policy. Now would you please state what information you received with respect to the change in TBA sales?

Mr. Thompson: May I ask received from whom?

Mr. Kelaher: From Atlantic.

Mr. Thompson: From whom in Atlantic?

Mr. Kelaher: I am asking the witness.

Mr. Correa: What is the question, if I may ask, the pending question?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: From Atlantic.

Mr. Correa: That is objected to on behalf of the respondent.

ent Goodyear on the ground that it calls for hearsay as to Goodyear and is not binding on Goodyear.

Mr. Kelaher: Would you—

Hearing Examiner Kolb: (Interposing) As far as I am concerned, this complaint charges sufficient amount of conspiracy and I am not going to sustain the objection on the ground that Atlantic is involved and not Goodyear.

784 Mr. Correa: If your Honor please, then I have to submit that we have been misled by Counsel supporting the complaint, we have been, granted the complaint may be far from lucidly clear and no one would be faster to concede that than myself. We have had characterizations of the complaint and of the theory and specifically in respect of this point of conspiracy made formally and in briefs submitted to the Commission, when we were arguing, as your Honor will recall, the point in respect of which this matter of whether or not the complaint charged conspiracy was far from irrelevant and this is a very late date indeed in the proceeding to be told that despite their asseverations to the contrary, counsel supporting the complaint now claims that this complaint charges—

Hearing Examiner Kolb: He hasn't made any statement so far this afternoon. It is a question I have raised because you are sitting there and saying that this is a matter between the witness and Atlantic and you have nothing to do with it. When they come to Goodrich, he sits there and says its is a matter between the witness and Goodrich, and I have nothing to do with it, and then the complaint charges that the two of you, Goodyear and Atlantic, by means of this contract have done certain things, that is what the complaint charges. Then it must apply to both, whether it is called a conspiracy in the course of action or
785 common course of action, or whatever they are going to call it. It just doesn't make sense to me.

Mr. Correa: If your Honor please, I submit with great

respect that the complaint does not charge that the Goodyear and Atlantic together or in a common course of action did certain things. The charge is that Goodyear had a contract with Atlantic which provided for certain things to be done by Goodyear, which Goodyear did, and it charges that in connection with that contract, Atlantic did certain things and exercised certain influence and so forth over its dealers. That is what it charges. It doesn't charge any where conspiracy.

Hearing Examiner Kolb: That is what this witness is testifying to, what Atlantic did in connection with their dealers, in furtherance of the Goodyear and Atlantic contract and you are saying he can't testify because Goodyear is not involved.

Mr. Corréa: I am saying, if your Honor please—

Hearing Examiner Kolb: (Interposing.) Well, we have to draw the line somewhere.

Mr. Corréa: There is no exception to the hearsay rule under which this hearsay testimony, because that is what it is, let's face it, can be admitted in this proceeding, as binding on Goodyear. Now there is nothing in the world to stop counsel supporting the complaint from going out and proving what Atlantic did in the ordinary and proper way, which they seemingly are allergic to, by getting testimony and witnesses and putting them on the stand and letting them testify directly. But for some reason they want to go around the barn and not get direct testimony, but get somebody who can only say as to what he was told by somebody else, and offer that for the truth, present somebody else, an absent declarant, if I may use the technical language of the law of evidence, and I object to that, if your Honor please, and I submit that not only is here no basis in this complaint for the admission of any such evidence, but the complaint at least as explained and amplified by the statements of counsel supporting it, ab-

solutely negates a basis of that kind and that is the basis, if your Honor please, of any objection and nothing else.

Hearing Examiner Kolb: Let me see that letter.

Mr. Kelaher: (Handing to the Examiner.)

Mr. Correa: May I add, before your Honor rules, because I wish to heed your Honor's admonition and complete my argument before your Honor rules, that it may well be that this seeming difficulty in which we find ourselves, owing to the application of the ordinary rules of evidence, and the difficulty which seems to arise about this complaint which one day has to be one thing for one purpose and another day another, a diametrically opposite thing, 787 for a different purpose, arises not out of the rules of evidence or even out of the philosophic principle of contradiction which says that a thing can not at one and the same time and in the same respect be and not be, but perhaps arises out of an adherent and basic weakness or inadequacy of the case attempted to be pleaded by this complaint against the respondent Goodyear.

Hearing Examiner Kolb: That will come out at the end of the case.

Mr. Correa: I agree, but I am quite serious in the suggestion I make. I think sometimes a weak case does not wait until the end to manifest itself.

Hearing Examiner Kolb: Well, I think the information contained in this letter, if properly approached by the witness, the witness could testify to it as far as Atlantic is concerned undoubtedly. I don't think you will question that.

Mr. Correa: No, if your Honor please. I make no point as to the admissibility of the evidence or the testimony proffered against Atlantic one way or the other. My only objection is it being taken as against the respondent Goodyear.

Hearing Examiner Kolb: Well, that is where we get into difficulty.

Mr. Thompson: I wonder if we could have a one minute recess for me to consult with counsel.

788 Hearing Examiner Kolb: All right.

(Whereupon, a short recess was taken.)

789 Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Examiner, during the short recess there was a conference of counsel and it is stipulated in so far as Atlantic and staff counsel are concerned that the last sentence on Commission Exhibit 306-B is withdrawn from the offer of the document, and with that understanding, so far as Atlantic is concerned, I will withdraw my objection to the admissibility of the document and thereby save the time that would otherwise be involved in having Mr. Connell testify to its contents.

Hearing Examiner Kolb: Will you strike that last sentence off the exhibit?

Mr. Kelaher: It can be done with pencil.

Mr. Correa: If your Honor please, for the respondent Goodyear I am willing to withdraw so much of our objection as goes to the introduction of the document in lieu of testimony in the ordinary way by the witness. So much of our objection as would lie against the reception of the substance of the evidence contained in this document, whether given in the form of an exhibit or given in the form of testimonial declaration on the stand still stands, but I gather from your Honor's previous rulings that that is a matter with which your Honor feels you can best deal with at a later stage in this case.

Hearing Examiner Kolb: I suggest it be received
790 subject to your objection.

Mr. Correa: Thank you, your Honor.

Hearing Examiner Kolb: Commission Exhibit 306-A

and B will be received in evidence under stipulation and subject to objection of counsel for Goodyear.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 306-A and B, were received in evidence.)

By Mr. Kelaher:

Q. Mr. Connell, I call your attention to the fact that Commission Exhibit for identification 312-A through D inclusive, and 313 are documents with the name, R. S. Findley at the bottom thereof, is that correct?

A. That's correct.

Q. Is Mr. Findley still an employee of the Electric Storage Battery Company?

A. He is.

Q. And can arrangements be made to have Mr. Findley appear at this hearing some time during the remainder of this week to testify in connection with these documents?

A. I believe they can.

Q. Thank you.

Mr. Kelaher: Your Honor, we will reserve offering Commission Exhibits 312-A through D and 313 into evidence pending the appearance of Mr. R. S. Findley, 791 who authored the documents.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Any further questions of this witness?

Mr. Kelaher: Yes.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Connell, after your contract with Atlantic terminated in February of 1951 did you then sell Exide batteries directly into Atlantic dealers, directly to Atlantic

dealers, by that I'm talking about the Electric Storage Battery Company soliciting Atlantic accounts directly.

A. The first, did we directly sell to Atlantic dealers, the answer to that would be no; did we attempt to sell or sell any Atlantic accounts, the answer to that is yes, because Atlantic Refining had both what we considered, in our opinion, distributors as well as dealers or subdistributors, and those accounts we attempted to solicit ourselves with some degree of success, the dealers we attempted to have our other wholesale distributors solicit their business.

Q. So, the Electric Storage Battery Company through its own branch such as the Philadelphia branch did solicit certain Atlantic dealer accounts?

A. Not dealer accounts, distributor accounts.

792 Q. I'm referring to Atlantic Dealers who were classed by your company as distributor accounts, is that correct or are you referring to—

A. (Interposing.) Shall I put—Atlantic accounts who supplied other dealers?

Q. You are referring to Atlantic accounts classified as distributors by Atlantic, is that correct?

A. I can't say how they classify them. They were classified in our opinion as distributors, because the order indicated that they sold other Atlantic dealers, other dealers.

In other words, we do no business direct with dealers, only with distributors.

Q. Are you familiar with so-called supplying dealers, such as Harvey George and Mr. Parris, Ed Parris?

A. I would say that I knew some of them. I knew a few of them personally, others I knew by hearsay.

Q. Now, would that type of account be solicited directly by your company or not?

A. I would have to refresh my memory on that. I would say that as this letter indicates, we actually signed

up three Atlantic accounts as direct wholesale distributors, one located in New Oxford, the other in Lancaster, and the other in St. Thomas. They do not happen to include the ones you mentioned. Those accounts we signed direct and retained for quite some time.

793 Q. I would like to show you Commission Exhibit for identification 312-A through D and on 312-B for example, reference is made to Aero Oil Company, Incorporated, New Oxford, Pennsylvania; Herr Thompson Oil Company, Inc., Lancaster, Pennsylvania; E. C. Barnes and Son, St. Thomas, Pennsylvania.

Now, the letter states, "three former AR Company wholesalers were signed up under WD contracts and are now buying exclusively from us."

Now, is a WD contract signed by the Electric Storage Battery Company directly, by one of your salesmen directly?

A. With these accounts, yes; that is a wholesale distributor account, it—the WD represents wholesale distributor.

Q. Reference is made on that same page to AW contract. Would you explain who solicits that business?

A. We had for the purpose of obtaining better distribution to small subjobbers, an arrangement with wholesale distributors whereby they could solicit the business of the so-called subdistributors, or jobbers, who in turn solicited dealer business. They were sold at a lower price than the authorized dealer price.

Q. Does your company directly solicit the business of W dealers?

A. If you say directly solicit them, we had on occasion in connection with the wholesale distributor man, if
794 there was a question of can we get the business or if a distributor said "I would like to get Joe Smith, and I'm able to, will you help me get him as a subdistributor?" then our man might work with them. But actually in most

cases the soliciting was done by the wholesale distributor and agreed upon with us.

Q. Well—

A. That is approved by us.

Q. So these accounts named in Mr. Findley's letter identified as Commission Exhibit 312-A through D, could have been called on by Mr. Findley personally or by someone under his supervision, is that correct?

A. No. I should correct the statement in that you asked me, I thought, broadly what our arrangement was for obtaining W accounts. In the case of the Atlantic Refining Company, with these so-called Atlantic wholesalers, they solicited the business of these accounts and handled all business with them without our aid. Now, this—

Mr. Thompson: I don't think the record is clear on who you mean by "they." Do you mean that the wholesale distributors solicited the wholesale accounts?

The Witness: The Atlantic Refining Company solicited this business and agreed to sell them at wholesaler prices.

Now you haven't asked me to volunteer this—

By Mr. Kelaher:

Q. After your contract with Atlantic expired who 795 solicited these accounts, the company directly?

A. No, then we asked our remaining wholesale distributors to go after this business, on a W basis. The only ones that we solicited direct— Now, I shouldn't say the only ones, but the ones we solicited and we thought justified a direct wholesale distributor contract and obtained were these three named above, you see, Aero Oil, Thompson and E. C. Barnes.

Now, when Mr. Findley says "28 Atlantic wholesalers have been signed under W contract as follows:" he means they were accounts who had been sold by Atlantic Refining Company, who upon termination of our contract with At-

lantic Refining Company, our other wholesale distributors went after in an effort to get their business for Exide.

Q. At that time your company was working with these other wholesale distributors, is that correct?

A. We were doing everything we could to retain the business, as we do any time we lose any customer.

796 Mr. Thompson: The WD accounts, they were your direct large distributor accounts, and the so-called W accounts were sub-wholesalers?

The Witness: That is correct.

Mr. Thompson: Who were signed up by the large wholesale distributors?

The Witness: That is correct. The contract is an agreement that they would buy at a pre-determined subdistributor price.

Mr. Thompson: But the sub-distributors dealt with the W distributors, wholesale distributors or with your company direct?

The Witness: No, their dealers, they were billed, their collections were the responsibility, their credit was the responsibility of the wholesale distributor.

Now I certainly can't say that our man would never contact a wholesaler. Certainly he did anything he could to further the obtaining of Exide batteries, but the overall picture was a relationship with the wholesale distributor.

Mr. Thompson: Well, I think you said previously that Mr. Findley worked in cooperation with the wholesale distributors to get the W contracts, to get the sub-jobber business?

The Witness: Because you were talking about a broad proposition, we have all types of wholesale distributors
797 some do things on their own and some can not, some require guidance and assistance.

Mr. Thompson: So he was fully informed as to the accounts listed in the document that he referred to? They were in his sales territory, were they not?

The Witness: That is correct. This letter is a report to me as a result of my asking why they weren't selling more Exide batteries, and this is his answer.

Mr. Thompson: To whom?

The Witness: To anyone. Why his sales were off.

Mr. Thompson: Did you refer him specifically to sales to Atlantic Refining accounts?

The Witness: That one I can't answer, although I am of the opinion that I asked why, asked the Philadelphia Branch why their sales were off and what they were doing to pull them up.

Mr. Thompson: And this is Mr. Findley's answer to you?

The Witness: This is one of a number of answers I got.

Mr. Kelaher: In view of the witness' statements, I think it would probably be appropriate to call Mr. Findley, who was working in the market at the time and question him about conditions at that time.

Mr. Correa: The work on the stipulation is for 798 nothing, I take it, then. I don't know why we wasted the time.

Mr. Thompson: If your Honor please, it is 20 of six and in view of that statement, I obviously can not start the cross-examination of this witness tonight. If they were not going to call Mr. Findley, I was going to waive cross-examination, but since they are apparently, I would like to defer the cross-examination of Mr. Connell either until tomorrow morning or until after Mr. Findley has testified.

806 Mr. Kelaher: Mr. Examiner, before we call a witness, I would like to state that we have appended a specification 2 to the subpoena duces tecum served upon Mr. Connell. It calls for a printed list of Exide wholesale dis-

tributors by states and cities and branches July 15, 1951 and also if available in printed form similar lists printed as of dates in 1950 and 1957, current.

If agreeable with counsel, I have been furnished with three lists dated July 15, 1951, November 1, 1950, and May 1, 1957, in response to this request, and I will now show them to counsel and if agreeable, it may be possible to stipulate these into the record without calling Mr. Connell back. (Handing to Respondent counsel.)

Mr. Kelaher: Your Honor, now that we have withdrawn 312 and 313, will the next number replace 312?

Hearing Examiner Kolb: No, it still remains that number. The next number will be 314.

Mr. Kelaher: At this time, your Honor, I would like to have marked for identification as Commission's exhibit 314-A through D a letter from William P. Cairo, Assistant Secretary of the Electric Storage Battery Company, dated June 26, 1957 addressed to me, to be identified as 314-A; and to be identified as 314-B a document entitled "Exide Wholesale Distributors by States and Cities, November 1, 1950"; and to be identified as 314-C a document entitled Exide Wholesaler Distributors by States and Cities, July 15, 1951"; and to be identified as exhibit 314-D a document entitled "Exide Wholesale Distributors by States and Cities, May 1, 1957."

(The document referred to was marked Commission's exhibit 314-A, -B, -C, -D for identification.)

Mr. Kelaher: I now offer these documents into evidence.

Mr. Correa: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. Any objection?

Mr. Correa: No objection.

Mr. Thompson: I have no objection.

Mr. Kelaher: I would like the record to show that the exhibit just offered into evidence was furnished in response to specification 2 of a subpoena served upon Mr. C. Connell of Electric Storage Battery Company.

Hearing Examiner Kolb: There being no objection, 808 the document will be received in evidence as Commission's exhibit 314-A through D inclusive.)

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 314-A, -B, -C, -D for identification was received in evidence.)

Mr. Thompson: If your Honor please, you will recall that yesterday we, with your permission, deferred the cross-examination of Mr. Connell.

I have at the present time no intention of recalling Mr. Connell for cross-examination upon the assumption that the record is clear and in the event, when we look at the record, we find that there are ambiguities in it or things which require clarification, I should like still to reserve the right to call him.

Hearing Examiner Kolb: You can make the request after you have examined the record.

Mr. Thompson: Yes, sir. We haven't up to this point on the record waived it. I just wanted to be clear on that.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I assume that that request will be made during this week so we can recall Mr. Connell this week?

Hearing Examiner Kolb: I assume so.

Mr. Thompson: Yes.

Mr. Dias: I call Mr. Johnson, please.

809 TYLER L. JOHNSON was thereupon called as a witness for the Commission and having been duly sworn, examined and testified as follows:

Direct Examination by Mr. Dias.

Q. State your name and business address for the record, Mr. Johnson.

A. Tyler L. Johnson, 6118 and -20 Germantown Avenue.

Q. What is the name of your Company?

A. E. P. Rotzell Company.

Q. What is your position with the Rotzell Company?

A. I am a salesman in that territory.

Q. How many years have you been employed by Rotzell?

A. 16 years.

Q. All that time as a salesman?

A. Part of that time as a store manager.

Q. How long was that and when?

A. Two years, a little over, as store manager, due to the death of my store manager.

Q. And how long ago was that?

A. That was—I had been with the company about two years—that would be 1942, from 1942 to 1944.

Q. Since that time you have been a salesman?

A. Yes, sir.

810 Q. What is your sales territory, Mr. Johnson?

A. Roxborough, Manayunk, Chestnut Hill, Germantown, Mount Airy, and I also cover east of Board Street, just a few scattered calls.

Q. Do you attempt to sell the full Rotzell line?

A. Yes, sir.

Q. To what classes of customers do you attempt to sell?

A. I call on gasoline stations, automobile repair shops, new car agencies, used car dealers.

Q. Do you sell-so-called hard parts?

A. Pardon?

Q. Do you sell hard parts?

A. Hard parts?

Q. Yes.

A. Yes, sir.

Q. Is that term familiar to you?

A. No, it is not.

Q. Repair parts.

A. Repair parts, yes.

Q. What do you include in repair parts?

A. Well, replacement parts for transmission, rears, motors, ignition parts, and batteries and fan belts, and all that would come under those parts.

Q. Batteries would?

A. All in the replacement parts line.

.S11 Q. Among the service stations in your territory, are there any Atlantic service stations?

A. Yes, sir.

Q. Can you tell us approximately how many there are?

A. Approximately 25 or 30.

Q. And do you solicit those stations?

A. I solicit quite a few of them, not all of them.

Q. How many do you solicit?

A. Well, I would say 15 or 20.

Q. How often do you call on them?

A. Approximately every two weeks.

Q. What about the remainder of the Atlantic stations in your territory, do you call on them at all?

A. Well, some of those stations are located in the Northeast section of the city and they are beyond our range of delivery.

Q. How many of those are there, do you have any idea?

A. Well, I would say it would be 10 or more over in that section.

Q. Well, confining yourself then just to those stations which are within your reachable area, your sales territory and those that you can reach, how many are there? Do you call on them all?

A. Yes, I call on approximately all of them in the Roxborough, Manayunk and Germantown, Mount Airy and Chestnut Hill areas.

Q. What do you sell them?

812 A. Well, we try to sell them accessories, and when I say accessories, I mean the chemical lines, fan belts. And I also try, if they do any minor repairs, try to sell them mufflers, brakes, and ignition parts, fuel pumps, fuel lines.

Q. What particular products constitute the majority of your sales to those stations?

A. To all the Atlantic stations, the ones that are doing minor repairs, most of our sales are in brakes, mufflers, or ignition parts.

We try to sell them chemicals and batteries and fan belts, but—

Q. (Interposing.) Do you sell them those items, batteries, chemicals and fan belts?

A. No, we don't. We are not able to sell them any of those. The prices are all right, but most of them carry a stock of batteries and they just don't handle—don't touch our batteries at all.

Q. What batteries do they carry?

A. Well, they carry Goodyear batteries.

Q. How about fan belts and hoses?

A. They carry Goodyear fan belts and hoses.

Q. Was there ever a time that you were able to sell to those stations?

A. Yes, a few years back we were able to sell them hoses, some fan belts, and we were able to sell them chemicals, anti-freeze also.

813 Q. How about batteries?

A. Batteries, well, once in a while, if they needed one, but we were never able to sell them a stock of them.

Q. How long ago was that?

A. I would say four or five years ago.

Q. Are you familiar with the George Kee Atlantic station?

A. Yes, sir.

Q. What is his address?

A. 6201 Ridge avenue.

Q. Do you sell to that station?

A. Yes, sir.

Q. Can you tell us what you sell to him?

A. Why, we sell them antifreeze—not all of their requirements, just a part of their requirements. We sell them mufflers occasionally, and brake linings, shock absorbers.

Q. How about batteries?

A. No.

Q. Filters?

A. Oil filters, no.

Q. Chemicals?

A. Can't sell them any chemicals.

Q. Do you know where he buys his supplies from?

A. He buys his chemicals and his batteries and fan belts from the Goodyear distributor.

Q. Do you know the name of that distributor?

814 A. Fred Glenn.

Q. Do they advertise TBA products on the stations?

A. Yes, sir.

Q. What type do they advertise?

A. They advertise Goodyear products and also the DuPont chemical line. They have Goodyear signs—well, the DuPont chemical line is handled by the Goodyear distributor.

Q. Fred Glenn?

A. That is right.

Q. Are you familiar with the Tom Beale station?

A. Yes, he has an Atlantic station at 8601 Ridge Avenue.

Q. Do you solicit his business?

A. Yes, sir.

Q. What do you sell to him?

Mr. Correa: If your Honor please, I must object just on the grounds that this is cumulative. We have already had the Atlantic stations in this gentleman's territory dealt with in testimony of a whole group of them. If we go through each one by one, we can sit here for ever I suppose. I don't object to the testimony as such, although I don't think it is particularly relevant and material, but I do object to having to sit here for endless assimilation of the same points.

Mr. Dias: As I recall yesterday, your Honor, there was some criticism about the fact that we didn't have specific instances, and now we have specific instances and they say it is going to take too long.

815 I don't know how to satisfy the other side of the room.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: Exception.

By Mr. Dias:

Q. Are you familiar with the Tom Beale station?

A. I am acquainted with Tom Beale and his station, yes, sir.

Q. Do you sell any of your products to him?

A. The only products we sell him are brakes and mufflers.

Q. Do you try to sell him batteries?

A. Yes, sir.

Q. Filters?

A. Yes, sir.

Q. Chemicals?

A. And chemicals, yes, sir.

Q. How long have you been selling to that station, do you have any idea?

A. I have been calling on Tom Beale I think ever since he opened the station.

Q. How long has that been?

A. I would say—I wouldn't say positive, but eight or nine years.

Q. Does he advertise TBA products on the station?

A. Yes, sir.

Q. What products does he advertise?

816 A. He advertises the same line as the other stations, Goodyear tires and batteries, and DuPont chemicals.

Q. Do you know where he gets those products?

A. He gets those from TBA distributor.

Q. Do you know who the TBA distributor is?

A. Fred Glenn.

Q. Are you familiar with the Bill Crowley station?

A. Yes. He has an Atlantic station in Chestnut Hill.

Q. Do you solicit his business?

A. I have called on Bill Crowley for eight or nine years. And I am soliciting for all of what you would call TBA items, batteries, chemicals, and also our lines, mufflers, ignition parts, and antifreeze. The only thing we are able to sell him is a little antifreeze, and maybe once in a while some ignition parts. He doesn't do much repair work up there. He is mainly a service station in the sense of a service station, in that he does lubrication, tire changes, sells batteries, and does that type of work more than repair work.

Q. What brand TBA does he advertise on or about the station?

A. Goodyear brand; he has signs out front and on the windows.

Q. Do you know where he gets those supplies?

A. Fred Glenn.

Q. Are you familiar with the Bill Driskill station?

A. Yes, sir. Bill Driskill is at Germantown and Rount-
fort Road.

817 Mr. Thompson: May we have the spelling of that
name?

The Witness: D-r-i-s-k-i-l-l.

By Mr. Dias:

Q. Will you state the items you sell him?

A. We sell Bill Driskill fuel pumps, mufflers, and bat-
teries—pardon me, not batteries. Ignition parts. That is
all we are able to sell him.

Q. Do you know whether or not he carries other TBA
products?

A. H carries Goodyear's line of batteries and DuPont's
chemical line and Goodyear tires and fan belts.

Q. Do you know where he gets those supplies?

A. From Fred Glenn. All of the territory which I
cover, all of the territory, Germantown, Chestnut Hill and
Roxborough, Manayunk, are covered by Fred Glenn, who
is the Atlantic TBA distributor up there.

Q. I see. Are you familiar with John Bean's station?

A. Yes, John Bean is at Lincoln Drive and Mount
Pleasant Avenue.

Q. How often do you solicit his business?

A. John Bean and myself are very friendly and have
been for quite a number of years. I call on John about
every week. I used to call more often than that. In fact,
we used to have lunch together a couple of times a week.

Q. Does he buy—

A. (Interposing.) He buys ignition parts, brakes,
818 mufflers, and some antifreeze from us, but the chemical
line, I can't sell him that anymore and filters, I can't
sell him those, or I can't sell him batteries.

Q. You say you can't sell him the chemical line any more. Did you at one time?

A. At one time I sold John Bean quite a bit of chemicals, That was about five years ago. I used to sell him oil filters but since the change has been made to Goodyear, why, he sticks pretty much to that line.

Q. Does he advertise Goodyear on the station?

A. Yes, sir.

Q. Are you familiar with the Sid Saman's station?

A. Yes. He owns his station. He is across the street, across Lincoln Drive and below John Bean. He has a small station there. He does lubrication and sells the Goodyear batteries and tires. We sell Sid mufflers, and brakes, that is about the only repair work that he does in his station.

Q. Does he carry TBA?

A. He carries Goodyear batteries and tires.

Q. Are you familiar with Lee Asher?

A. Lee Asher is at Germantown Avenue and Washington Lane and he does a very large repair business. When I say repairs, I mean in the minor repair field.

Q. Yes.

A. Motor tune-ups. We sell him ignition parts, we sell him fuel pumps, we sell him brakes and mufflers 819 and tail pipes. I have tried to sell him batteries, tried to sell him chemicals, but he buys from the Goodyear TBA distributor, Fred Glenn.

Q. Does he advertise the Goodyear products on the station?

A. Yes, sir.

Q. Are you familiar with the Amos Atlantic station.

A. Amos Atlantic is at Green and Queen Lane. He handles all of the Goodyear TBA line and we only sell him mufflers once in a while, and we were able to sell him a couple of little tire changing tools lately, and a fuel pump. The rest of the lines he handles, why, we can't sell him.

Q. And does he advertise Goodyear TBA?

A. Yes, sir. Goodyear TBA and DuPont. We incidentally also carry a DuPont chemical line, number 7 line, which is handled by all these Atlantic dealers, but even though we carry that line, we still can't sell to them.

Q. If you know, are your prices the same as theirs?

A. Our prices are the same as the Atlantic distributor, yes.

Q. What sort of service do you offer?

A. We have the truck available at all times for delivery service, and the truck covers that territory from 8:30 in the morning until 5 o'clock at night.

Q. Do you know whether or not your service is as good as Glenn's?

A. I think our service is better. We deliver to a 820 lot of places as much as two and three times a day.

Q. Are you familiar with the Mahlon Craig station?

A. Yes, he is at 6242 Rising Sun Avenue.

Q. Do you sell him any TBA?

A. We sell him a large amount of brakes and ignition. That is about all we can sell Mahlon. He buys his—he advertises Goodyear and he buys his chemicals, number 7 chemicals and Goodyear tires from the TBA distributor in that territory, whose name is George. I don't know his first name. G-e-o-r-g-e.

Q. Can you name any other stations in your sales territory that you sell to?

A. There are other stations there. I am not very successful as far as selling them anything. I call on them fairly regularly, at least once every two weeks or once a month. There is Wayne Johnson, spelled the same as mine, s-o-n. He is at Ogontz Avenue and Washington Lane.

Q. Do you sell him anything?

A. Fuel pumps occasionally, mufflers occasionally. No chemicals, no batteries, no antifreeze.

Q. Does he advertise TBA on the station?

A. He advertises Goodyear, and DuPont 7 line.

Q. Who is his supplier, Glenn or George?

A. Fred Glenn is his supplier.

Q. Are there any others?

A. Al's Atlantic, at York Road and Cheltham Avenue.

821 Q. What do you sell to that station?

A. The only thing we have been able to sell him, I called him about once a month. We sold him a little equipment for his service truck, a starting unit and a couple of jacks and a battery jumper cables. Those are emergency cables for road service.

Q. How about batteries, did you sell him those?

A. I haven't been able to sell him batteries, chemicals or anything else.

Q. What does he advertise on or about his station?

A. The Goodyear line and the number 7 line.

Q. Are there any others?

A. There are some other Atlantic stations. I can't remember them off hand.

Q. All those that you named, how often did you say you called on those people?

A. I call on them at least twice a month. On most of them. And some of them once a month. And when I call on them, we have a catalogue and I talk to them about all the items which they could possibly sell at a service station; oil filters, shock absorbers, I talk Delco batteries, and the different manufacturers whom we represent at different times have deals or have a Spring offer or a Fall offer, and at those times why, we solicit the service stations more extensively than we do in the in-between seasons because at that time they can sell more of
822 the chemicals and also we solicit them for antifreeze in the Spring and Fall.

Q. Have you any new Atlantic stations opened in your territory recently?

A. No, not in my immediate territory that I know of.

Q. Have any Atlantic stations changed hands recently in your territory? That you know of?

A. None that I know of.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Any cross-examination?

Cross-Examination by Mr. Ballard.

Q. Mr. Johnson, you said I think that you call on gasoline stations?

A. Yes, sir.

Q. Repair shops?

A. That's right.

Q. New car dealers?

A. Yes, and used car dealers.

Q. How many accounts do you call on all told?

A. I would say about 150 to 175.

Q. And the bulk of your sales are repair parts, aren't they?

A. Yes, sir, and when I say repair parts, I include ignition and shock absorbers and brakes on that.

Q. Yes, parts for minor everyday repairs?

823 A. That is right.

Q. And I suppose the garages are the best customers for that kind of parts, I take it?

A. The garage is our best customer for heavy repair work. What I mean by that is motor parts, ignition parts, brakes, mufflers, and transmission rear parts. The service station is our best outlet for chemicals and antifreeze, apparently because they see the customer more often than the garage.

Q. How many garages do you suppose there are in your list of 150 customers?

A. About half.

Q. And new car dealers and used car dealers would make up how much?

A. Well, I would include the new car dealers and the used car dealers in with the garages. That is the way I figure it, that way, because a new car dealer in his used car department will use the same parts as a garage for servicing used cars for resale and then we also are able to sell new car dealers parts for their own cars, like if they run short or—the car dealers today don't stock parts for their own cars over five years of age, except fast moving parts.

As an illustration, last week one of the agencies in our territory, one of my customers, purchased three rear springs from me for a 1949 automobile. They don't carry them any more.

824 Q. Well now, you say that for a while you were a store manager?

A. Yes.

Q. What branch was that?

A. See I originally came with Rotzell at the branch at 3917 North Broad which was closed and then they moved over to 5919 Germantown Avenue, or 5921 Germantown Avenue, and after we had been there for approximately a year, my store manager was taken ill and died and while he was sick he had shown me from time to time how to operate the store and I had helped him due to his illness.

Q. Now you call that a store. Is that a retail store? Could I go in and buy something there?

A. You can come in and buy something there and you would purchase it at list price unless you had an order from a garage man or from some company who would be entitled to a discount.

Q. In other words, that store sells to the public, just the way a service station or garage would sell?

A. Yes.

Q. Just to the consuming public?

A. If they come in and ask for it. Our sales on list price are very small. We are mainly wholesalers but we do display the merchandise, which we handle and we do have customers come in from time to time and purchase items.

Q. Now speaking about these various Atlantic 825 dealers, for instance Mr. George Kee, you don't know of course all the suppliers he deals with, do you?

A. No, only all I know is he deals with Fred Glenn and I know he deals with the Bowes Seal-Fast man. I don't know his name. They sell tube repairs.

Q. Do you happen to know that he also deals with Gaul Derr & Shearer?

A. I believe I have seen their salesman in there. You see, in service stations, salesmen from pretty nearly all the parts houses of which there are quite a few in Philadelphia, if they have branches within delivery distance, their salesmen will call on the same people that I call on.

Q. In other words, almost all of these stations that you named for us, other suppliers call on them just the way you do?

A. Yes, sir.

Mr. Ballard: I have no further questions.

Mr. Correa: I have a question or two.

By Mr. Correa:

Q. How many salesmen does the Rotzell Company of yours have?

A. Six — seven.

Q. And we had only three.

A. What?

Mr. Correa: That's all right. No further questions.

Mr. Thompson: May I ask a question off the record?

Hearing Examiner Kolb: Off the record.

826 (Discussion off the record.)

Hearing Examiner Kolb: On the record.

Redirect Examination by Mr. Dias.

Q. You stated on cross-examination that there are sales made over the counter at your store. Do you work on a commission?

A. Yes, sir.

Q. Do you get credit for those sales made over the counter if it is your customer that comes in?

A. If my customer comes into the store, I get credit for any purchases he makes and if he calls up, anything, any customers that I call on, whether they call up, whether I write the order or whether they come into the store, I get credit for their sales.

Q. You also stated that Rotzell has seven salesmen. I think we heard the other day there were five.

A. Well, we have four stores, under the name of E. P. Rotzell Company—

Mr. Correa: (Interposing.) I object to counsel impeaching his own witness.

Mr. Dias: I just want to clarify it, I am not trying to impeach the witness.

Mr. Correa: You are calling attention to the conflict between this witness of yours and another witness of yours, from your many Rotzell witnesses.

827 By Mr. Dias:

Q. Will you name all your salesmen and the area?

A. Well, in South Philadelphia territory, we have Thomas Kernaghan; in the West Philadelphia territory we have Ed Heller; in the Germantown territory, myself; and in the Fairmont, out of the Fairmont store, we have Charles Marriott, who calls on fleets.

Q. Does Mr. Marriott call on service stations, too?

A. He calls on some, but mostly on fleets.

Q. Who is the next one?

A. Herman Rabinowitz. He calls on the same type of accounts that I do.

Q. In what area?

A. He calls on the area north of Fairmont Avenue, Fairmont up to Lehigh, I believe, and then we have a store, it is a sub-store, Suburban Auto Supply, we have a man there by the name of George Walker, and—pardon me. I was wrong when I said seven. It is six.

Mr. Dias: That is all.

Hearing Examiner Kolb: Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

828 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Booz to the stand please.

ELMER H. BOOZ, JR. was called as a witness and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Elmer H. Booz, Jr., 312 Prospect Avenue, Secane, Pennsylvania.

Q. Were you at one time an Atlantic lessee dealer, Mr. Booz?

A. Yes.

Q. Where was your station located?

A. Wycombe and McDade Boulevard.

Q. And for how long a period did you operate that station?

A. February 14, 1952, to May 31, 1956.

Q. And prior to that time, did you operate another service station?

A. Yes, a Texas station, two blocks up.

Q. And did you bring any of the merchandise, the TBA merchandise, you had in the Texas station to your Atlantic station when you moved in?

A. Yes, I brought all the tires, tubes, batteries and accessories.

829 Q. And what kind of tires did you bring; what brand of tires?

A. B. F. Goodrich.

Q. What brand of batteries?

A. Goodrich.

Q. Who was the Atlantic representative with whom you discussed the change in operation?

A. Mr. Al Vayda.

Q. Did Mr. Al Vayda make any remarks with respect to the Goodrich tires and batteries?

A. He told me I could bring them up until I depleted the stock of them.

Q. And when you moved into your Atlantic station, what outdoor—was there an outdoor sign located on the station?

A. All there was was Goodyear signs.

Q. And how about the window valance?

A. They were Goodyear too.

Q. And were you, or did you rather, advertise the fact that you were selling B. F. Goodrich tires?

A. No.

Q. And did you have any other brand of tires in stock?

A. Yes; we had some Lees.

Q. And where had you obtained the Lee tires?

A. When the other dealer checked out we bought them off him.

Q. And was there any other brand of tires in the station?

A. Goodyear.

830 Q. Did you advertise the Lee tires?

A. No.

Q. Why didn't you?

A. Well we were mainly selling Goodyears.

Q. About what percentage of your stock at that time was Goodrich tires?

A. About one third.

Q. About what percent was Lee tires?

A. One third.

Q. And was the remaining one third Goodyear tires?

A. That is right.

Q. Now, after you moved into the station, how long did you continue to carry the Goodrich tires and batteries?

A. Until the stock was depleted.

Q. And after that, what brand did you carry?

A. Goodyear.

Q. And while the Goodrich batteries were in your place of business, in your Atlantic station, were you ever visited by a Mr. Arnholt?

A. Yes.

Q. And did Mr. Arnholt make any comment about the Goodrich batteries?

A. He covered the "rich" part on the battery and said, "Now it looks half right."

Q. I guess it was no mere coincidence that the sponsored brand begins with G-o-o-d.

A. Right.

Q. Did you at any time carry the Bowers battery line?

A. Yes, I did.

Q. And where had you displayed the Bowers battery?

A. Well, I tried to keep them in the heater room.

Q. And where was the heater room?

A. In the back of the building.

Q. And why had you kept them in the back of the building?

A. Well, I had the only key for that.

Q. Was that because you didn't want Atlantic representatives to see the batteries?

A. Well, it wasn't good for them to see them.

By Mr. Kelaher:

Q. Did you at any time purchase from—let me ask you first from whom did you purchase your Goodyear TBA supplies?

A. Mainly from Ed Parris. Approximately 85 percent of it.

Q. I beg your pardon?

832 A. Approximately 85 percent of it.

Q. And could you have purchased Goodyear tires at a lower price than you were paying Mr. Parris?

A. Yes.

Q. Do you recall how long it took for your Goodrich tires and battery stock to become depleted?

A. Oh, I would say approximately about five or six months.

Q. And after that—

A. After all, when a man sees a Goodyear sign up, he expects to buy Goodyear tires, so you try to deplete it as fast as you can and sometimes you give a man a better price on a tire to get rid of it.

Q. And after that you never purchased Goodrich tires or batteries?

A. No.

Q. Now, who was your principal supplier of accessories?

A. Mr. Parris.

Q. And did you purchase accessories from other jobbers or other sellers of TBA in the area?

A. Yes.

Q. Would you name those suppliers, please?

A. V. J. Auto Parts, Auto Gear, and Auto Radiator.

833 Q. And what products did you purchase from V. J. Auto Parts?

A. Mostly Barsleak.

Q. And was any comment ever made by an Atlantic salesman with respect to your Bars stock?

A. Well, they didn't like it on the shelf and I asked if we could put it on the back shelf—

Mr. Thompson: May we have an identification of who the salesman was at the time?

By Mr. Kelaher:

Q. Do you recall approximately when that request was made by Atlantic?

A. I would say in '53, '54, the end of '53 or the beginning of '54. The name I couldn't tell you because we had a rough territory and the salesmen didn't last too long there. I mean, it was mostly price.

Q. Now, can you give us the name of some of the Atlantic salesmen who called on you?

A. Al Vayda, Joe Connelly, Joe Muldoon. I think there was another one in there.

Q. Was there a Mr. Petrison?

A. Well, there's one between Joe Muldoon and Steve Petrison, I believe.

Q. And was it one of those four men who made this comment about Barsleak?

A. Yes.

834 Mr. Thompson: Which one, please, Mr. Kelaher?

The Witness: That I couldn't tell you, after all, I can't remember back that far.

By Mr. Kelaher:

Q. It would be the salesman who was calling on you at the time you specified, is that correct?

A. That would be the one.

Q. Mr. Booz, did any Atlantic representative ever show you what is known as the "black book"?

A. Well, don't state it that way, that sounds pretty bad, it's more or less of a record book.

Q. I mean the color, I don't mean to imply what you are thinking, it's kept in a black binder.

A. Yes, it's a black binder and it's—it keeps all your TBA records in there, your gasoline and oil, what you purchase each month.

Q. Would the TBA—would it show specifically your TBA purchases as an Atlantic dealer?

A. That's right, what you bought from your Atlantic supplier.

Q. And in your case it would show what you bought from Mr. Parris?

A. That's right.

Q. And would it show any other purchases you might have made from other suppliers of TBA?

A. No.

835 Q. And would they ever make any comments about your TBA purchases?

Mr. Thompson: Who is "they" please, Mr. Kelaher?

By Mr. Kelaher:

Q. By "they" I'm talking about an Atlantic representative.

A. They would say, "You're a little low this month, you're going to be a little under this year; can we get it up to show a little bit of an increase," which we always did like to do.

Q. And they would refer—and they were referring to your TBA purchases from Mr. Parris?

A. That's right.

Q. Now, would you state who made such statements to you in the Atlantic organization?

A. I couldn't give you a truthful answer.

Q. Would Atlantic salesmen, Muldoon for example, have made such statements?

A. Well, out of all of them he'd be more than likely.

Q. Did Mr. Parris ever make such statements?

A. No.

Q. But as I understand it they had an accurate record from your purchases from your Goodyear TBA supply point?

A. That's right.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examine.

836 *Cross-Examination by Mr. Thompson.*

Q. Mr. Booz, am I not correct that you also were the lessee of another Atlantic Station, Naaman's Creek and Meeting House Road in Ogden?

A. That's right.

Mr. Kelaher: I beg your pardon, would you please read the question and answer, I didn't catch it.

(The reporter read the question and answer.)

By Mr. Thompson:

Q. And that was a new station which Atlantic was just opening up when you took it?

A. That's right. That was a brand new station.

Mr. Kelaher: Would you fix the time, please?

Mr. Thompson: I can ask the questions, and I will come to it in my own inept way if I may.

Mr. Kelaher: I defer to the distinguished professor of evidence of Pennsylvania.

By Mr. Thompson:

Q. And that I think was about June of 1956, wasn't it, Mr. Booz?

A. That's right; June of '56, and November 15, '56.

Q. And you requested Atlantic to transfer you to that new station, didn't you?

A. That's right, due to price condition along Uycomb Mac Dade Boulevard.

837 Q. That is a tough place for a service station operator, isn't it?

A. That's right.

Q. Price wars all the time?

A. I figured there wouldn't be any out there, but, of course, there wasn't any customers out there either. (Laughter.)

Mr. Kelaher: Would you read the answer, please?

(The reporter read the answer.)

By Mr. Thompson:

Q. After you had been there a few months you had a proposition from Sun and wanted to take that and asked Atlantic to let you out of your lease. Is that about the story?

A. That's correct, it was a much better lease and a much better rent set up, and much more gallonage.

Q. As I understand it Atlantic was mighty sorry to lose you, Mr. Booz?

A. Well, I hope so, because I had good relations with them and I left under good terms, I hope.

Q. I show you, sir—

Mr. Thompson: Would you mark that please? That will be A-4.

(The document referred to was marked Respondent's Atlantic 4 for identification.)

Mr. Kelaher: May we see that?

Mr. Thompson: Yes, indeed. (Handing document 838 to counsel for the Commission.)

By Mr. Thompson:

Q. I show you a document marked A4 identified by the phrase at the top, "Mutual Consent of Cancellation," and ask you whether that is your signature on the document? (Handing document to the witness.)

A. Yes, it is.

Q. And I call your attention to the fact that the document says "Dealer received better offer from competition," and that was the reason why you left Atlantic, was it not?

A. That's right.

Mr. Thompson: I think, sir, I cannot offer this document at this time; I shall have to do so as part of Atlantic's case later.

At that time I think it is understood that I may substitute a photostat?

Mr. Kelaher: That is correct.

By Mr. Thompson:

Q. Mr. Booz, are you old enough to remember the old baseball phrase "Tinkers to Evers to Chance"?

A. No, I'm not quite that old. (Laughter.)

Q. You were Texaco to Atlantic to Sun, weren't you?

A. That's right.

Q. As a matter of fact, a good operator like yourself always has opportunities to go with other companies, isn't that true.

839 A. That's right.

Q. And you and George Hill have a happy partnership together now at a Sun station?

A. Do you realize it's one of the happiest relations we ever had?

Q. Sharing the responsibilities, neither of you have to work quite so hard, do you?

A. Let's put it this way: we are both working just as hard but better pleasure, we don't have as much pressure.

Q. Share the responsibilities?

A. Share the responsibilities and pressure from the company itself.

Q. Sun's not as aggressive as Atlantic, is it?

A. Well—

Mr. Kelaher: What was the question?

A. That's a way of putting it.

Q. Maybe that's why we sell more gasoline here than they do.

A. That's possibly true. We're pumping 50,000 and the station across the street, which is Atlantic, is only pumping 18,000.

Q. I'm sorry to say that I can't say truthfully I wish you luck. (Laughter.)

A. Well, if I may, I mean, this doesn't have any bearing on the case, I know—

Mr. Kelaher: Well, if it doesn't I suggest it not 840 be put into the record.

The Witness: Like a farmer, you have to plant a seed before you can harvest the crop. If Atlantic—

Mr. Thompson: The Examiner wants you to get back to the case, Mr. Booz.

By Mr. Thompson:

Q. Now, Vayda was the first salesman that you had on Mac Dade Boulevard?

A. That's right. He was a very good salesman.

Q. He didn't last as your salesman very long, did he, because Joe Connelly took it over.

A. That's right. Mr. Al Vayda went to a better job.

Q. With the Ford Motor Company?

A. That's right.

Q. And Joe Connelly took over, he was—

A. That's right, he was another good salesman.

Q. And he also went to a better job?

A. That's right.

Q. With Atlantic?

A. That's right.

Q. And then Muldoon took over for a very short time?

A. Very short.

Q. And then was followed by Steve Petrison?

A. No, I think there was another man in there, I'm not sure. He wasn't there too long, maybe it was a vacation for somebody else, but I'm pretty sure there was another salesman in there.

Q. According to records I have—and see if this refreshes your recollection—Joe Connelly was your salesman from July of 1952 until sometime in 1954.

A. Yes.

Q. Now, you did make a reference to an incident which happened with a salesman in '53 or '54. Would it have been Joe Connelly you were talking about.

A. If he was the salesman at that time that is who it would have been. That I can't remember.

Q. Did Joe every try to push you around?

A. No, Joe was very good.

Q. Well, how about Steve Petrison, did he ever push you around?

A. No, he didn't have that much of experience at the time.

(Laughter.)

Q. Fellows like Joe Connelly, Steve Petrison, of course, tried to sell you TBA, didn't they?

A. Pardon, what was that question?

Q. I said, Joe Connelly, Steve Petrison, Vayda, the various salesmen you had, tried to sell you TBA, didn't they?

A. That is right, yes, sir, they did.

Q. As a matter of fact, they carried TBA order books, didn't they?

A. Not all the time. Once in a while they had for-
842 gotten them and left them home; mainly that wasn't
their job to sell TBA, they would—DuPont had a run
on something, so Joe would take half the territory and
maybe Ed Parris would take the other half, the same way
with Steve and Ed Parris, they would take half, and you
might buy five or ten cases of DuPont or you might get in
on a spring dating on tires.

Q. During those promotions and things like the spring
dating on tires, the Atlantic salesmen were out trying to
sell the Goodyear line, weren't they?

A. Yes.

Mr. Kelaher: Would you restate that question, please.
This is getting to be a closed conversation over there, I am
sorry to say. I know it is inadvertent. We can't hear
what is going on.

(Question and answer read.)

Mr. Thompson: That is all for Atlantic.

Mr. Correa, do you have any question?

Mr. Correa: No questions.

Mr. Kelaher: May we have a moment, your Honor?

Redirect Examination by Mr. Kelaher.

Q. Mr. Booz, on cross-examination you were asked about
your relationship with George Hill and you stated that it
was very enjoyable because there was less pressure, among
other things, there was less pressure from the oil com-
pany.

843 A. That is right.

Q. Well, Atlantic is like this gentleman here said,
more aggressive, they are after you more to stock. The
more stock you have, the more you are going to sell be-

cause you have got to sell to get your money to pay for the stock that you have got.

Q. So you are referring to more pressure to purchase Goodyear TBA?

A. That is right. Yes, it would be Goodyear TBA, that is all they sold.

Mr. Kelaher: That is all, your Honor.

Recross Examination by Mr. Thompson.

Q. Are these fellows pretty good TBA salesmen, Atlantic fellows?

A. They have got to be. I was first in the territory; I think Steve can tell you that, in 1954 I was first in tires, second in batteries and third in accessories. And that is out of 28 stations. And I was, I believe, the fourth highest in gallonage.

Q. When you sell TBA it is pretty profitable, you get a pretty good margin on TBA, don't you?

A. Not necessarily. On tires you are working approximately on about—I had it figured out one year there was 19 and a half percent, which isn't very good at all. Of course, you can never sell tires at list price, there is

844 always someone from the Goodyear company or somebody else that is going to knock you down on it. If you could sell from list, you would only have to sell two tires a week, but that is impossible, so you sell a dollar over key and get your ten percent plus your two percent and discount, which comes out approximately to 19 percent, when you figure in your used tires.

Q. Then your Goodyear tire, of course, has to be competitive with the Kelly Springfield next door and the Goodrich tire?

A. Well, the Goodyear tire can't be competitive with Kelly, because we buy Kelly at a cheaper price. We can

get quantity prices, which you can't do with Goodyear. You get a flat ten unless you bought some place else besides Ed Parris and then you get 10, five, and two; which I used to buy my white-walls there and my black-walls off Ed Parris. That was the best way I knew of keeping track of it.

Q. How about your mark-up on accessories, isn't that higher than the mark-up on tires?

A. That, too, is also how you buy. If you wait for your sales to come off, why you can buy at approximately 45 percent mark-up on it. If you don't, why it runs around 30 or 33 and a third. It all depends on who you buy it off of.

Q. A service station couldn't operate today without TBA though, could it?

A. No, that is definite. No, they couldn't.

845 Mr. Thompson: Thank you very much.

Further Redirect Examination by Mr. Kelaher.

Q. Mr. Booz, if I understood you correctly, you stated you could buy Goodyear tires at lower prices at suppliers other than Mr. Parris.

A. That is right. I could buy them at ten, five, and two, once in a while 10, 10, and two. And off of Lee you could get three tens and two.

Whether you bought one, 50, or a hundred from Ed. Parris, you would get 10, two, two percent cash at the end of the month, 30 days.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Correa: No questions.

Hearing Examiner Kolb: That is all, thank you very much.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Balloran, please.

846 FRANCIS J. BALLORAN was called as a witness for and on behalf of the Commission and, having been first duly sworn, assumed the witness stand and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Francis J. Balloran; 4312 Florida Avenue, Florida Park, Newtown Square, Pennsylvania.

Q. And at one time did you operate an Atlantic service station?

A. Yes, I did.

Q. And were you a lessee dealer?

A. Yes, sir.

Q. And during what period was that station operated?

A. September 23, '53, to January 21, '57.

Q. And where was the station located?

A. Route 252, on Westchester Pike, Newtown Square.

Q. And would you tell us whether you were from Newtown Square—how long did you live there?

A. Forty-one years.

Q. Forty-one years?

A. Originally from Philadelphia.

Q. And—

847 Mr. Thompson: He doesn't look old enough to have been there 41 years.

The Witness: Well, I am just 60, young man.

Mr. Thompson: Thanks for the compliment.

By Mr. Kelaher:

Q. And were you active in civic affairs in Newtown Square?

A. Yes, sir. Scout Master; Fire Chief; Fire President; everything but the Mayor of the Town, pretty near.

Q. And did you serve in the Armed Forces of the country?

A. Both wars.

Q. Both World Wars?

A. Yes, sir.

Q. And did you have any sons who served in World War II?

A. Two; and one daughter, a nurse.

Q. I think you are to be congratulated on your record and your family's record.

Now, you stated that you began operating the Atlantic station in September—did you say September?

A. Twenty-third, yes, sir.

Q. September 23, 1953, and at that time what TBA did you carry?

Did you carry tires?

A. Yes, sir.

Q. Did you carry batteries?

A. Yes, sir.

848 Q. Did you carry accessories?

A. Everything.

Q. And what brand did you carry?

A. I carried Goodyear tires, Goodyear batteries; I carried DuPont accessories. Well, I carried all TBA that was furnished by Mr. Miller, our supplier.

Q. Now, you stated that the Goodyear TBA was furnished by Mr. Miller?

A. That's right.

Q. Why did you buy your Goodyear TBA from Mr. Miller?

A. Well, that was the setup by the Atlantic Refining Company when I first operated the business.

Q. Was it a matter of your own choice?

A. No, sir.

Q. In or about November of 1955, did a Mr. Arnholt and Mr. Hayes visit you?

A. Yes, sir.

Q. And what was the purpose of their visit?

Mr. Correa: Objected to, if your Honor please.

By Mr. Kelaher:

Q. Would you please state the conversation you had with those gentlemen?

Hearing Examiner Kolb: Objection overruled.

A. Do you want me to answer that?

Mr. Kelaher: Yes, you may answer.

849 A. The conversation the main part of that day was that Mr. Arnholt said they would not renew my lease as of January the first, so I wanted to find out why. I asked why, and they couldn't tell me. They just said it was a lot of little things. Well, I had never been a gasoline station operator; I had taken this for my sons in the town and I knew very little about service stations, to be frank about it, only the pulling of the gas, but I figured that was —it was a good company. Their product was good, and I figured I'd take that station and build it for the boys.

Q. How many boys did you have?

A. Four.

I asked for a leave of absence from the U. S. Navy Department to get them started for the first year or two, and then that's what happened. Now, they said they wouldn't renew the lease from January the first, and my object from

that point on was to find out why, and I tried all methods to find out.

Q. And at that time did you call on any of your neighbors for assistance in the matter?

A. Yes, sir. Senator George Wharton Pepper, who has been a personal friend of mine for about 40 years.

850 By Mr. Kelaher:

Q. Did you later have a conference with Atlantic officials concerning the matter?

A. Yes, sir. I was sent from Mr. Pepper's office to Atlantic, 260 South Broad Street.

Q. And what happened when you arrived at 260 South Broad Street?

A. Well, we went over with Mr. Brennan and Mr. Sanborne; we went over the different things that happened on the station; up to that time I had never received no letters or no complaints of anything, and Mr. Brennan asked me to hold off until he got some things straightened out, and he would come out to see me, which he did, about 36 hours—the second morning after I was there he came out to the station.

Q. This is Mr.—who are you speaking about?

A. Tom Brennan.

Q. And thereafter, did Mr. Brennan or anyone else from Atlantic come out to see you?

A. Yes, sir. There was Mr. Sanborne with him, and my recollection is that the salesman, Tom Hayes, Tom always came out.

Q. And at that time was anything done about your lease?

Mr. Thompson: Could we fix the approximate date, 851 Mr. Kelaher?

By Mr. Kelaher:

Q. Yes. I thought we had.

Would you state the approximate date you were visited by Mr. Sanborne, Mr. Brennan and Mr. Hayes?

A. I would have to take it from the letter from Mr. Colley.

Mr. Correa: May we inquire what letter? The witness made a gesture, if your Honor please, said the letter to Mr. Colley there. I just wondered what he was talking about.

(The document was marked Commission's Exhibit 315-A and B for identification.)

By Mr. Kelaher:

Q. Mr. Balloran, I hand you a document identified as Commission's Exhibit 315-A and B and ask you to state what it is. (Document handed to the witness.)

Mr. Thompson: It is polite to show it to opposing counsel.

Mr. Kelaher: I thought after I identified it we would.

A. It was a letter written to Mr. Colley to find out what was happening—

Mr. Thompson: Objected to.

Mr. Kelaher: I just want you to say who it is from and to.

852 The Witness: From me to Mr. Colley, Vice President of Atlantic Refining Company.

By Mr. Kelaher:

Q. What is the date?

A. December 14, 1955.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I will now offer Commission Exhibit 315-A and 315-B into evidence.

Hearing Examiner Kolb: Any objection?

Mr. Thompson: No objection, but I don't think it has anything to do with the case.

Hearing Examiner Kolb: The letter is received in evidence—

Mr. Correa: I am sorry, if your Honor please. I realize we are phantom respondent here, but I still guess we had better preserve our record notwithstanding that, and our character is well exemplified by this letter which is apparently a matter between the witness and Atlantic Refining having chiefly to do with the witness' sales of petroleum products and having nothing to do with TBA or the respondent Goodyear, or anything relating thereto. So I think as the respondent Goodyear, the matter is completely immaterial, irrelevant, and incompetent. I would like to note the objection.

853 Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence as Commission's Exhibit 315-A and B.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 315-A and B for identification, was received in evidence.)

Mr. Thompson: Are you going to substitute a photostat?

Mr. Kelaher: If that is agreeable we can do that.

By Mr. Kelaher:

Q. Now, this letter, CX 315-A and B, is dated December 14, 1955. Does that fix in your mind the visit of Mr. Sanborne, Mr. Brennan and Mr. Hayes?

A. Yes. It was just about a week later when those men come out.

Mr. Thompson: What was the date of that letter, Mr. Kelaher?

Mr. Kelaher: December 14, 1955.

By Mr. Kelaher:

Q. And at that time were you presented with a three-year lease?

A. Yes, sir.

Q. Did you accept the lease?

A. Yes, I did.

Q. Now, Mr. Balloran, you stated that you personally were not too familiar with the service station business?

A. That is true.

Q. Did you have any employees in the service station?

A. Yes, sir, I had nine.

Q. Nine employees?

A. Yes, sir.

Q. And were any of your sons among the nine?

A. Yes, sir, two of them.

Q. Two of your sons?

A. Yes, sir.

Q. And who managed the station, principally?

A. My oldest son was the one that—I started to train him to manage the station by sending him to school and taking over, but he thought police work was better, so he quit the gas and went in the police work.

Q. What was his name?

A. Albert, Albert Balloran. Then I put my next son in.

Q. What is his name?

A. Charles. And left him take over. At that time I was not coming back for about six months.

Q. At that time what—

A. I was knocked out for about six months. I couldn't even go to work for six months.

Q. Did you personally work in the station from time to time?

A. I worked in the station six months from the 41 855 months I had it. I worked in that station 14 to 17 hours a day, seven days a week.

Q. So you did become familiar with service station operations?

A. I bet you.

Q. Now, you stated a few moments ago that you were furnished Goodyear TBA by a Mr. Miller.

A. Ernie Miller.

Q. E. F. Miller. Is he the Goodyear TBA supply point in this area?

A. Yes, sir; on Garrett Road.

Q. When you say that, you mean your purchased Goodyear TBA supplies?

A. That is true.

Q. Did you want to purchase TBA from Mr. Miller?

A. Not truthfully, no.

Q. Why didn't you?

A. Half the time when you called up you couldn't get it. Half the time you called up he didn't have it. If he did, you had to send a man with a truck and waste an hour and a half to go pick it up and bring it back.

Q. Could you have purchased Goodyear tires at a cheaper price in the area?

A. Yes, sir.

Q. What was the name of the supplier?

856 A. Hires and Kocher.

Q. And why didn't you purchase Goodyear tires from Hires and Kocher?

A. Why didn't I?

Q. Why didn't you?

A. I did.

Q. And did you purchase them in large quantities?

A. Yes. Their records will prove that I purchased tires in pretty large quantities.

Q. And did you purchase in large quantities from Mr. Miller?

A. As far as I could go, yes, but the—why I purchased

from Hires and Kacher was a simple—I could get any tire I wanted in 20 minutes and I could get them cheaper than I could buy them off of Mr. Miller.

Q. Was anything ever said to you by Atlantic representatives about that situation?

A. No, sir, not offhand.

Q. Now, did you ever purchase any other brand of tires?

A. I practically purchased everything in the tire line. When my customers wanted Firestone, I bought a Firestone tire; if they wanted Royal—it was according to what the customer wanted. I was there to give them service and give them what they wanted.

Q. Were any comments ever made by Atlantic salesmen about your purchases of other brands of tires?

A. Not directly, no, sir.

Q. Did you purchase U. S. tires from Harris and Leonard?

A. That's right.

Q. Were such tires advertised, U. S. tires?

A. Not out of my place they weren't.

Q. Where did you keep such tires?

A. Back on the racks, back on the oil racks where they couldn't be seen.

Q. Seen by whom?

A. Any of the Atlantic men that came in there, the bosses.

Q. Who came into your station?

A. Well, the main man that used to come into my station was Mr. Thomas Hayes, my salesman, and Mr. Arnold would come out once in awhile.

Q. Would they make comments if they saw them?

A. I don't know.

Mr. Correa: I object.

The Witness: I wouldn't know that. I never displayed them; I never displayed any other make of tire.

By Mr. Kelaher:

Q. Did you purchase Lee tires?

A. Yes, sir.

Q. And where did you keep them?

A. On the racks, sir. The Vice President of that 858 company lives right in my town. If he wanted Lee tires or his customers wanted Lee tires, I purchased Lee tires.

Q. And did you purchase U. S. tires on a regular stocking basis or on a fill-in basis?

A. Possibly all the off-brand tires were bought on the customers fill-in job.

859 Q. Would you state what you mean by "off-brand tires"?

A. Well, I'm handling Goodyear to begin with, if I buy a Royal or Lee or Firestone, or any make, to me that's an off-brand tire.

Q. So that you would only buy that type of a tire on a fill-in basis?

A. That's right. I can give you the men's name that ever bought them tires.

Q. Now was Mr. Miller's service on batteries?

A. The same way.

Q. Same way. What do you mean by that?

A. Well, you could get them or you couldn't get them, so you'd have to go somewhere else to buy them.

Q. Did he have them in stock in his place of business?

A. Not when I wanted them half the time.

Q. Where did you obtain the batteries if you couldn't obtain them from Mr. Miller?

A. Lee Tire, on Lancaster Pike.

Q. Did you always ask Mr. Miller first?

A. It was always a fact in our station that either one of the boys or any one of the fellows helping them, the assistant helping them would call Miller first before anything like that was bought.

Q. I see. What was the reason for that?

A. Well—

860 Q. Why did you call Miller first?

A. When you have a service station and you have men on there, a customer comes in there and wants to know the price of this or that, or what kind of battery, that fellow don't know the price, he's in a wrong position, if he has to run to me to ask for it or to know when to order, why it's wrong, I think.

Q. Who was the salesman who called on you from U. S. Tires, do you recall?

A. That was Bob—I don't know what his last name is.

Q. Would it refresh your recollection to mention that it might have been Bob Drennan?

A. Little Bob Drennan, he was the fellow that always came up there.

Q. And did you purchase anything from—well, did you do any recapping business for Mr. Drennan?

A. Plenty of it.

Q. And at that time was Mr. Miller in the recapping—did he have recapping facilities?

A. Yes. We'd just got a letter notifying us that Miller was going to start in the recapping business.

Q. At what time was that?

A. Oh, Lord, I'll never tell you no more, it was all approximately—all the way up. But I dealt with Harris and Leonard from the first day I—that he came around there.

861 By Mr. Kelaher:

Q. Were any comments ever made by Atlantic salesmen with respect to your purchases of these so-called off-brand tires or off-brand batteries or accessories?

862 Mr. Thompson: That question has been asked three times already, sir; and answered. It's purely repetitious.

Hearing Examiner Kolb: Objection overruled. The witness may answer.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. Now, you stated that you left the Atlantic station in January of 1957?

A. Yes, sir.

Q. Would you please state your reasons for leaving the station?

863 A. Pressure.

Q. Pressure?

A. That's right.

Q. What type of pressure?

A. Do you want to go back on the whole story?

Q. Was there any pressure on TBA?

A. The only pressure on TBA is when the monthly thing came around that they could generally tell you every nickel and dime that I bought off of Miller but nothing off of anybody else.

Q. And when you say "they" who are you referring to?

A. My salesman Mr. Hayes.

Q. And would he comment on your purchases from Mr. Miller?

A. Well, he could show me right there in figures what I purchased from him.

Q. And would he ever comment as to whether that was high or low, or so on?

A. Well no, not off-hand, it wouldn't be—it's just a thing of being told that you weren't buying the stuff you bought where you belonged. That's the way it meant to me, I don't know what it meant to them.

Q. And you considered that pressure to buy from Mr. Miller, right?

A. Positively.

Q. Mr. Balloran, did Mr. Miller have recapping 864 facilities when you began business in September of 1953?

A. I wouldn't be able to say that, but if he didn't he'd have them recapped for you, I believe that. I don't know whether he had his own facilities to do that or not, but I know if we sent them in there he'd have them done.

Q. Was it after that that you received the notice to the effect that he had recapping facilities?

A. That's right.

Q. And can you fix in your mind now approximately when that time was?

A. About a year and a half after I opened the station.

Q. And up to that time had you been having your recapping done by Harris and Leonard?

A. Harris and Leonard, right.

Q. Now, did you continue to have your recapping done by Harris and Leonard, by Mr. Miller?

A. Yes, practically all the way through until the last day in what I had left over he took back and returned my money for them.

Q. Who was that?

A. Harris and Leonard.

Q. Now, with respect to your purchases of batteries, in what quantities did you purchase Goodyear batteries from Mr. Miller?

A. Fifteen with one free every time; that's the 865 way it worked out, if you bought 15 you had one free, you got a cheap battery free.

Q. Did you always request that many?

A. No, sir; sometimes we used to send in for two, or three, four or five, according to different batteries that

was needed in the automobiles. Like to keep so many of each type on hand to fit the different cars.

Q. And if you sent in for two or three as you mentioned, would you sometimes get 15 batteries back?

A. No, they'd try to sell you 15, but you didn't need that many.

Q. And would you sometimes keep the 15 or return them?

A. Yes, I'd keep them. We'd get rid of them, but half the time you'd have them laying around, especially the wet batteries they were the worst to lay around.

Q. They not only tried to sell them to you, they did sell them to you?

A. Well, that was their job.

Mr. Correa: I object, if your Honor please, as to the form of the question. It's cross-examination. The counsel gets the answer; he doesn't like the question, he starts trying to force the witness to give him an answer. I object to this form of question.

Hearing Examiner Kolb: It's rather confusing, his answer. He said laying around. I think it's proper.
866 The objection is overruled.

By Mr. Kelaher:

Q. Did any of your employees ever have conversations with Mr. Hayes or Mr. Arnholt?

Mr. Thompson: I object to that, sir. How could you possibly know.

Hearing Examiner Kolb: Can you answer yes or no?
The Witness: Yes.

By Mr. Kelaher:

Q. And did such employees report to you about such conversations?

A. They told me just what took place.

Q. And did any of the reports concern TBA?

A. No, they did not.

Q. Are you presently an Atlantic dealer, Mr. Balloran?

A. Yes, sir. We have a station at Zieglerville, Pennsylvania, Route 29. That's a two pump station.

Q. Are you presently a contract dealer or lessee dealer?

A. I'm my own dealer this time.

Q. What do you mean you are your own dealer this time?

A. No one is going to tell me what to buy or sell from this station.

Q. Was anyone telling you what to buy or sell from the last station?

Mr. Correa: I object, if your Honor please. I 867 think the witness' testimony speaks for itself.

Hearing Examiner Kolb: The objection is overruled.

By Mr. Kelaher:

Q. You may answer.

A. Let me have that question again.

Mr. Kelaher: Will you read the question, please?

(The reporter read the following question:

"Question: Was anyone telling you what to buy or sell from the last station?")

By Mr. Kelaher:

Q. Did anyone tell you what to buy or sell at the last station?

A. Yes, they did. You couldn't sell anything on that station except what you bought from Goodyear or DuPont or an Atlantic dealer can't sell anything but Atlantic products and the one that its representatives are still supplying. When I went to buy a Firestone or Goodrich tire or anything like that, that was against the rules of that station, I know that. Anybody knows that. The salesman knew it. That's why I left the station.

Mr. Kelaher: That's all, your Honor.

The Witness: If I invest my own money, I want to buy what I want to buy; I don't have nothing against the product, the thing is you have to do certain things and if you want to do that you might as well go to Russia.

868 By Mr. Kelaher:

Q. And you are stating that you had to buy Goodyear TBA from Miller, is that correct?

A. That's true.

Mr. Thompson: Now, are you through, Mr. Kelaher?

Mr. Kelaher: I'm finished.

Mr. Thompson: This is one of the surprise witnesses, your Honor, as you know.

Mr. Kelaher: Your Honor, this is the only surprise witness we have brought in.

869 Mr. Thompson: This is one of the surprise witnesses I understand there are going to some more.

Mr. Kelaher: There is only one in Philadelphia, one in Wilmington.

Mr. Thompson: Under your Honor's ruling I think we may defer cross-examination until Friday—or was that a stipulation with you, Mr. Kelaher?

Mr. Kelaher: We have no objection if it's convenient for the witness to come back.

The Witness: I have to be at a settlement on Friday at 1:00 o'clock, that's at 69 Upper Darby.

Mr. Kelaher: Could you be here later in the day?

The Witness: Yes, sir; but I must be at the settlement for 1:00 o'clock.

Mr. Kelaher: What time would be convenient for you? Three o'clock?

The Witness: Give me an hour to get down here.

Mr. Kelaher: Could you come down in the morning?

The Witness: I'm at Zieglerville tomorrow unless it's absolutely necessary.

Mr. Thompson: I meant Friday morning.

The Witness: Friday morning, as long as I can get back there at the settlement, it's the Land Title—

Mr. Kelaher: If you could you come in any time convenient to you Friday morning. Could you come in at 10:00?

870 The Witness: Right, I'll be here at 10:00 o'clock.

Mr. Kelaher: That is agreeable then. That's all for the present, Mr. Balloran.

Hearing Examiner Kolb: The witness will be excused until Friday morning.

Mr. Correa: Off the record if I may, your Honor.

Hearing Examiner Kolb: Off the record.

(Discussion off the record:)

Hearing Examiner Kolb: On the record.

Mr. Correa: If it please the Court: At this time I move the recall for further cross-examination of the witness Matthews and I base my motion upon the following grounds. We were given notice that the witness Matthews would be a witness only on Thursday before he appeared, despite the fact that apparently the witness had given a signed statement to the counsel supporting the complaint as long as four years ago and had not been in the employ of or had not been a lessee of the Atlantic Refining Company since May 7th, well over a month ago.

In view of the shortness of time we were unable, adequately, to search old files relating to the testimony of the witness as respects Goodyear and particularly in respect of the witness' claim that Goodyear, without his consent or commission, and against his will, in fact, had gone into his place of business and installed certain signs.

871 We have now been able to complete the search of these records and the company which under contract was charged with installing these signs in service stations

has produced or has furnished us a form on which appears—it is a carbon copy of the form—and on which appears purportedly the signature of Matthews, underneath the legend, a printed legend reading in part: "This installation meets with my entire approval. No damage has been done to my property." Dealers signature, Matthews.

Now, I may say that we have compared the signature appearing hereon with the signature appearing on Commission's Exhibit 294-A and -B, and at least on inspection this appears to be an authentic signature, assuming that the signature on the exhibit is and that was, I believe, identified by the witness as being his veritable signature.

So, for these reasons we wish the recall of the witness for further cross-examination in the nature of impeachment.

Hearing Examiner Kolb: As I recall, Mr. Correa, you asked the witness some questions about the signing of this document indicating to me at the time that you had some sort of a signed document.

Mr. Correa: No, if your Honor please.

Hearing Examiner Kolb: You should have produced it at the time you asked the witness about it.

872 Mr. Correa: If your Honor please, we did ask the witness whether in his absence, because all we had was his version of the facts at that time, whether in his absence this employee of his who was there had signed a document similar to this because, of course, we knew of the practice, and the witness, as I recall his testimony, said "I don't know. If he did he didn't tell me," which left the matter sort of up in the air. We did not know, of course, at that time that in truth and in fact the witness himself had signed such a document.

Mr. Kelaher: Mr. Examiner, two points I would like to make.

First, to get the record straight, when we notified counsel. I personally made a long distance call on January

17th to Mr. Ballard and to Mr. Mason to notify them that Mr. Matthews would appear as a witness. That was the first day that I knew that he was going to be called as a witness.

Hearing Examiner Kolb: What date was that?

Mr. Kelaher: That was on January 17th—

Hearing Examiner Kolb: January—

Mr. Kelaher: I mean June 17th, which was a week ago, and in so far as the signature is concerned, I would like to call your Honor's attention to the testimony of Mr.

Hinderscheid, Vice President in Charge of Sales of 873 Lee. I recall showing him a document with his signature on it and apparently it conformed with his signature on other documents and he stated that he didn't sign it. So, I don't think you can just presume that Mr. Matthews signed this statement.

Mr. Correa: Well, if your Honor please, I submit that in any court in the land you are permitted to offer an identified signature and a questioned document and permit a jury to look at them both and decide, or a judge or any other trier of the fact. I never heard such a ridiculous proposition.

Hearing Examiner Kolb: The witness was called, you were notified a week ahead of time, the witness was examined, cross-examined and released. I think the request comes too late on that at this time.

Mr. Correa: All right.

Mr. Kelaher: I move we adjourn until 2:00 o'clock.

Hearing Examiner Kolb: We will adjourn until 2:00 o'clock.

(Whereupon, at 12:18 o'clock p.m., the hearing in the above-entitled matter was recessed to reconvene at 2:00 o'clock p.m., this day.)

(2:10 p.m.)

Hearing Examiner Kolb: Come to order.

Mr. Dias: I call Mr. Franks.

WILLIAM LEE FRANKS, was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Mr. Correa: If your Honor please, before we get into this witness, there is one matter of straightening out the record that I would like to make clear.

Just before we adjourned for lunch, I made a motion for the recall for further cross-examination of the witness Matthews and stated in the record my ground.

Now I should like that statement to stand as an offer of proof and in connection with that statement or in the course of that statement I referred to a paper signed by the witness Matthews, and I should like to have that paper at this point marked for identification, to stand as a part of my offer of proof.

Hearing Examiner Kolb: The document will be marked Respondent's exhibit G-1 for identification.

(The document referred to was marked Respondent's exhibit G-1 for identification.)

Hearing Examiner Kolb: Let the record show the 875 document marked for identification Respondent's exhibit G-1 will be received as part of the offer of proof.

(The document referred to, heretofore marked **RESPONDENT'S EXHIBIT G-1** for identification, was received as an offer of proof.)

Direct Examination by Mr. Dias.

Q. Mr. Franks, will you state your full name and business address?

A. William Lee Franks, 8 East 9th Street, Chester, Pa.

Q. And the name of your company?

A. Auto Parts and Radiator Company.

Q. How long have you been with Auto Parts, Mr. Franks?

A. Five years.

Q. And in what capacity, sir?

A. Approximately two and a half years on the inside as a counter man and two and a half years on the outside as a salesman.

Q. Which two and a half years have been on the road?

A. The past two and a half years.

Q. What is your sales territory right now?

A. My sales territory right now is Media, Newtown Square, West Chester, Folsom, Springfield, Paoli, Bryn Mawr.

Q. Did you have a different sales territory at one time?

A. Yes, I did.

Q. What was that, and over what period?

876 A. That was prior to January 1st, of this year.

Q. And what was that territory?

A. That territory consisted of Clifton Heights, Drexel Hill, Collingdale, Springfield, Folsom, and Woodlyn.

Q. And you worked that territory about a year and a half, is that correct? How long did you work that?

A. Just about two years.

Q. Well, confining your remarks then to that period of time prior to January 1, 1957, what type customers did you solicit?

A. Service stations, automobile dealers, independent repair shops, body shops and contractors.

Q. And among the service stations, were there Atlantic stations?

A. Yes, sir, there were.

Q. Can you tell us about how many Atlantic stations there were in your territory?

A. Nine.

Q. Did you sell to any of the nine?

A. Yes, sir, I did.

Q. How many?

A. Six.

Q. And can you tell us how often you called on the six?

A. Very faithfully once a week.

Q. And what about the other three?

A. Periodically.

877 Q. Did you call on them periodically during the two-year period?

A. Not during the whole two-year period.

Q. Have you ever sold those three?

A. No, sir.

Q. Of those three, referring to those three, did they handle TBA products?

A. Yes, sir.

Q. Do you recall the type brands they had, the brands they handled?

A. Goodyear tires, batteries, fan belts, hoses.

Q. Was that true of the three?

A. Yes, sir.

Q. Now the six that you sell to, can you tell us what you sell to each of them and can you name the stations?

A. Bryant's Atlantic station, MacDade Boulevard and Fairview Road in Woodlyn, Pennsylvania.

Q. Bryant?

A. Yes.

Q. What did you sell to that station?

A. The only thing I sell Bryant is mufflers, tail pipes, brakes, and so forth. I sell him no TBA items.

Q. Do you attempt to sell him those items, that is, TBA items?

A. Yes, sir.

878 Q. Does Bryant handle TBA?

A. I beg your pardon?

Q. Does he handle TBA?

A. Yes, sir.

Q. What brand?

A. Goodyear tires, batteries, fan belts, Prestone anti-freeze, DuPont chemicals.

Q. Can you name another station?

A. Russell's Atlantic station.

Q. What is his address?

A. 2319 Marshall Road, Lansdown, Pennsylvania.

Q. And what do you sell to him?

A. Mufflers, tail pipes, ignition.

Q. Have you tried to sell batteries and accessories to that station?

A. Yes, sir.

Q. Have you been able to sell those to him?

A. In the year 1955, when I called on Smedley Russell, I received a pre-season order for Prestone antifreeze from him. During October of 1956 when I returned to get another pre-season order for the winter of 1956, at the time he wasn't ready to talk about antifreeze. A few weeks later I walked in and he had 10 cases sitting on the floor and I asked him why he didn't buy them from me, and his explanation was that they put pressure on him, and he
879 in turn still gave me an order for 10 cases of anti-freeze.

Q. Who was he referring to when he said they put pressure on him?

A. The Atlantic distributor.

Q. Referring back to that Bryant station, can you give us some idea of your volume of sales to that station and the number of times you called on them?

A. Yes. In 1955 I called on him 18 times. I received total sales of \$477.72.

Q. And in 1956?

A. In 1956 I called on him 20 times and I received \$334.28.

Q. How about Russell's?

A. Russell's Atlantic station, in 1955 I called on him 29 times. I received \$954.43 worth of business.

In 1956 I called on him 50 times and I received \$1,865.11 worth of business.

Q. Can you name another station?

A. A & E Atlantic Station.

Q. What is their address?

A. Springfield Road and Ridley Avenue, Clifton Heights, Pennsylvania.

Q. And what do you sell to that station?

A. Brakes, mufflers, hard parts.

Q. What are hard parts?

A. Hard parts are upper control pins, king pins—

860 Q. (Interposing) Yes. Are hard parts and repair parts synonymous? Do they mean the same thing?

A. Yes.

Q. Did you attempt to sell him batteries or accessories?

A. No, sir, I didn't.

Q. You did not?

Does he advertise on the station TBA products?

A. Yes, he does.

Q. And what is it he sells?

A. Goodyear tires, batteries, fan belts, hoses, Prestone antifreeze.

Q. Did I understand you to say you didn't attempt to sell him batteries?

A. No, sir.

Q. Or filters?

A. No, sir.

Q. Will you name the next station, please?

A. The next station is an independent station, Gill's Atlantic station, 2142 Darby Road, Havertown, Pennsylvania.

Q. And what products did you sell to Gill's?

A. Fan belts, hoses, ignition, brakes, chemicals, wire cable, antifreeze, equipment.

Q. And your volume of sales to him, do you have that?

A. During the year 1955 I called on him 36 times, I received a total of \$1,706.65 worth of business.

881 And in 1956, I called on him 52 times, and I received \$2,593.25 worth of business.

Q. Does that station handle TBA?

A. No, sir.

Q. It does not. Do they have any advertising at all about the station?

A. No, sir.

Q. Do you have another Atlantic station?

A. Herbey's Atlantic station, Burmont Road and Market Street, Drexel Hill, Pennsylvania.

Q. And your sales to that station?

A. During the year 1955 I called on him 29 times. I received a total of \$314.86. During 1956 I called on him four times. I received a total of \$534.44.

Q. And what type products did you sell to that station?

A. Mufflers, hard parts, brakes.

Q. How about batteries and accessories?

A. No, sir.

Q. Did you attempt to sell those to that station?

A. Yes, sir.

Q. Does that station carry TBA? Do they have tires in that station?

A. I am not sure. I think he has Goodyear tires and fan belts and hoses.

• Mr. Ballard: I move to strike the last answer. The 882 witness is just hazarding a guess.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Dias:

Q. That is five. I believe you have one more station, is that correct?

A. Way's Atlantic Station, Township and State Road, Drexel Hill, Pennsylvania. During the year 1955 I called on him 11 times and received a total of \$25.42 worth of business. During 1956 I called on him 31 times and received a total of \$144.29 worth of business.

Q. And what were the type of products you sold to that station?

A. Car rugs, fuses, Every Ready bulbs, and that is about all.

Q. Did you attempt to sell any batteries to him?

A. No, sir.

Q. You did not?

A. No, sir.

Q. How about filters and other accessories?

A. No, sir.

Q. On these stations, Bryant's, Russell's and Herbey's, you have attempted to sell them your batteries and accessories and so forth, is that correct?

A. Yes, sir. Herbey's Atlantic is an independent station.

Mr. Correa: Is that the one the witness said didn't sell any TBA?

Mr. Dias: No.

883 By Mr. Dias:

Q. Referring to Bryant, you attempted to sell him batteries and accessories, did you?

A. Yes, sir.

Q. And they refused to buy?

A. Yes, sir.

Q. Did they give you any reason why they wouldn't buy?

A. Bryant said to me a couple of times, "I have to
884 buy from Parris or I will be put out of my station."

Q. When did he tell you that?

A. July of 1956. During the month of October of 1956 when I tried to get a pre-season order of Prestone anti-freeze, he told me that he could not give me an order for even one case because Ed Parris knew how much he used, he was going to send it in to him and he still had antifreeze on the shelf left over from the year 1955.

Q. Who is Parris?

A. Ed Parris is the Atlantic distributor.

Q. And is he the Atlantic distributor throughout your entire territory?

A. To the best of my knowledge, sir.

Q. Now you mentioned that you attempted to sell batteries and accessories to Russel's. Did Russell give you any reason for not buying batteries, or accessories?

A. The only reason Russell give me is "I have to play ball with them."

Q. With whom?

A. Ed Parris.

Q. Can you state when he made that statement?

A. That was during the month of July 1956. The incidents I talked about of the antifreeze was during October.

Q. Now, October 1956, did that relate to Bryant's or Russell's? I understood it related to Bryant.

885 A. It relates to Russell.

Q. Russell's?

A. Russell's.

Mr. Correa: Could I have that last question and answer read, if your Honor please?

Hearing Examiner Kolb: Read the question and answer.

(The reporter read as follows: "Question: Now, October, 1956, did that relate to Bryant's or Russell's? I understood it related to Bryant. Answer: It relates to Russell. Question: Russell's? Answer: Russell's.")

Mr. Correa: The man said Bryant said something. How can that relate to Russell?

Mr. Dias: I find now he originally testified in that regard and I lost track of it, in respect to Russell.

Mr. Correa: It doesn't make sense.

By Mr. Dias:

Q. To clarify it, did you have a similar experience with both Bryant and Russell?

A. Yes, sir, I did.

Q. And they both occurred during October, 1956, is that correct?

A. On the Prestone antifreeze incident, yes, sir.

Q. Does your company furnish delivery service?

A. Yes, sir.

Q. In your opinion are your products, your batteries and accessories, competitive with those Good-year products sold by Parris?

Mr. Correa: I object—

The Witness: (Interposing.) Yes, sir.

Mr. Correa: I object to the question and move to strike the answer in view of the witness having answered before I had an opportunity to object on the ground that no proper foundation has been laid. The witness has been asked to give an opinion without the slightest effort or even pretense, shall we say, of qualifying him as expert in any way.

Mr. Dias: I think the witness testified, your Honor, that Parris was the distributor in his territory. He must know whether or not he runs into his competition along the line.

Mr. Correa: I submit that that is complete non sequitur. Why must he know? He must know if he knows and if he knows, bring it out.

Hearing Examiner Kolb: Objection overruled. Motion to strike denied.

Mr. Dias: Did you answer that question?

Mr. Correa: He answered the question before I had a chance to object.

Hearing Examiner Kolb: He answered the question.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examination?

887 *Cross-Examination by Mr. Ballard.*

Q. Mr. Franks, you were refreshing your recollection from a document there, were you not?

A. Yes, sir, these are my personal notes. (Handing to Mr. Ballard.)

Mr. Ballard: Thank you. (Returning to witness.)

By Mr. Ballard:

Q. Mr. Franks, how many accounts do you solicit regularly, of all kinds?

A. 276.

Q. Are the majority of those accounts service stations?

A. No, sir.

Q. Do you know what brand of antifreeze Ed Parris sells?

A. Yes, sir.

Q. What brand is it?

A. Prestone Antifreeze.

Q. He sells Prestone?

A. Yes, sir.

Q. Do you know what brand of antifreeze the Atlantic Refining Company sells?

A. DuPont's.

Q. DuPont?

A. Yes.

Q. And you yourself sell—

888 A. Prestone antifreeze.

Q. I think you said that you were a counterman for two and a half years?

A. Yes, sir.

Q. Does that mean that your company runs a retail store as well as your activities as a salesman?

A. Yes, sir.

Q. Where is that store located?

A. 8 East 9th Street, in Chester, Pennsylvania.

Q. Now all of the incidents you told us about, or all these customers you told us about, Bryant's Russell's, A & E, Gill's, Herbey's and Way's, those were your customers prior to the first of this year?

A. There is a few of them in there that are still my customers. A & E Atlantic I no longer call on. Gill's Atlantic I no longer call on. And Russell's Atlantic I no longer call on.

Q. That is because they are out of your territory?

A. Now, because they are out of my territory.

Q. Now, Mr. Franks, you have testified that a number of these stations purchased some or all of their TBA from Ed Parris, is that right?

A. Yes, sir, to the best of my knowledge.

Q. Is Bryant's one of those stations?

A. Yes, sir.

889 Q. Do you know where else Bryant purchases TBA?

A. No, sir.

Q. Do you know who else calls on him?

A. No, sir.

Q. But there are other TBA salesmen who do call on Bryant's?

A. Not to the best of my knowledge. I know there are other jobbers calling on him.

Q. Do you know which ones?

A. Yes, sir. Would you like me to name them?

Q. Yes.

A. Chester Auto Parts, Delaware County Motors, V. J. Auto Parts, and I guess that is about it.

Q. Would the same be true of Russell's, about the same group call on him?

A. No, there would be a different group calling on him.

Q. Could you tell us who would call on him?

A. Burrion Auto Supply.

Q. Who else?

A. Gaul Derr and Shearer, Clifton Auto Parts, Burmont Auto Supply.

Q. You wouldn't know how much those suppliers sell to those stations, would you?

A. No, sir.

Mr. Ballinger: No further questions.

Mr. Correa: I have only one question.

890 By Mr. Correa:

Q. Is Newtown Square in your territory?

A. Yes, sir.

Q. Did you ever call on a Mr. Ballaron?

A. No, sir.

Mr. Correa: No further questions.

Mr. Dias: That is all.

Hearing Examiner Kolb: That is all, Mr. Franks.

(Witness excused.)

Mr. Kelaher: Could we have a short recess?

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

Mr. Correa: If your Honor please, in connection with the testimony of the last witness, I believe there is a little confusion that ought to be cleared up in the interest of all of us.

I believe it is the fact, and indeed I think there was an objection made by one of counsel supporting the complaint sometime back on this ground, that antifreeze is shown by the Commission exhibits not to be embraced within the scope of the sales commission plan or agreement between Atlantic and Goodyear, that is, Prestone antifreeze. Am I correct on that?

Mr. Kelaher: That is my understanding, your Honor, that Atlantic itself however sells antifreeze directly to the service stations. Is that correct?

Mr. Ballard: That is correct. Prestone antifreeze.

Mr. Correa: Of course Goodyear is not interested in what Atlantic sells to its stations directly and I don't think the issue is in this case.

Furthermore, I understand and perhaps counsel is informed on this, that Ed Parris in fact does not wholesale any kind of antifreeze.

Mr. Kelaher: Actually I am not informed on that. I would be glad to answer that if I could.

Mr. Correa: I thought perhaps you knew of that fact. We will show it in due course.

Mr. Kelaher: I would like to call Mr. Heald.

FELIX B. HEALD was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Please state your name and home address.

A. Felix B. Heald, 1870 Eckard Avenue, Arlington, Pennsylvania.

Q. Were you at one time with Atlantic Refining Company, Mr. Heald?

A. Yes, sir.

892 Q. How many years?

A. A little over 20.

Q. And when did you leave Atlantic Refining Company?

A. The first of April, 1951.

Q. Immediately prior to that time, what was your position with Atlantic Refining Company?

A. Well, it was generally known as TBA supervisor.

Q. What section or what area?

A. New Jersey.

Q. Any particular section of New Jersey?

A. The southern part of New Jersey and also part of Delaware County.

Q. Part of Delaware County, in Pennsylvania?

A. That is right.

Q. Now after you left Atlantic, did you organize a jobbing concern?

A. Yes, sir.

Q. What was the name of that concern?

A. F & C Automotive Specialties, Incorporated.

Q. And when was that company organized or started in business?

A. In May of 1951.

Q. Would you please describe the business, what type of products you carried?

A. Well, it was a specialty jobbing business. I had a warehouse distributorship on three lines, namely, 893 Exide batteries, R. M. Hollingshead and Thermoid.

Q. What was the second one?

A. R. M. Hollingshead Company in Camden. They were warehouse deals that enabled me to sell to other jobbers on those three lines. The other lines I bought on a jobbing basis or where I didn't think there was enough volume, I bought on a so-called sub-jobbing basis.

Q. Would you please state which products you carried as a sub-jobber?

A. Fram—

Q. Fram? What products would that be?

A. Cartridges.

Q. Oil Filters?

A. Yes, sir. I bought on the bottom deal on Ever Ready and a few other lines. But the main lines were those three I first mentioned.

Q. Did you handle tires?

A. Yes, sir.

Q. What brand?

A. Lee tires.

Q. And were the brands you handled all nationally advertised brands?

A. Yes, sir, nothing else.

Q. What was the marketing area of F & C Automotive Specialties?

A. Well, the lower part of Montgomery County, and 894 New Jersey surrounding the Camden area, including Morrestown and Woodbury and Merchantville, and some in Philadelphia, not too much in the city.

Q. Do you have any delivery trucks?

A. Yes. I had a station wagon that I used as a delivery truck.

Q. And were you, yourself, an outside salesman for the concern?

A. Yes.

Q. And did you travel this marketing area you just described?

A. Yes, sir.

Q. Was your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Oh, yes.

Q. And what classes of customers did you sell to?

A. Gas stations, repair shops, car agencies.

Q. Did you call on Atlantic service stations?

A. Incidentally, I did forget to say that I put up a chemical line of four items, under my own brand, a car wash, a white wall cleaner, and what I called Speedy Wash and also a rubber cleaner, which I put up myself.

Q. When you say put up yourself, does that mean you prepared it?

A. That's right.

Q. And would that be classed as accessory items?

895 A. That's right, I would say so.

Q. Now I believe there is a question pending.

Did you call upon Atlantic service stations?

A. I called on all of them, including Atlantic.

Mr. Thompson: I didn't understand the answer.

The Witness: I called on all service stations that I thought I could do business with. The Atlantic stations were pretty desirable because generally they had more business than the others, Atlantic, Sun and Standard.

By Mr. Kelaher:

Q. At the time you began operations, had Atlantic begun its sponsorship of the Goodyear TBA line in your marketing area?

A. They were just starting about that time.

Q. Was there a time when you were able to sell or when you did sell Lee tires, Exide batteries, Thermoid products, Fram products, and your other lines to the Atlantic service stations?

A. Yes, sir.

Q. During what period were you able to make such sales?

A. That was generally during 1951, probably into January of 1952.

Q. What happened after January of 1952?

A. It stopped.

Q. And did you at one time solicit the business of Mr. Charles Lott in Morrestown, New Jersey?

896 A. Yes, I did.

Q. And did you at one time sell to Mr. Lott?

A. Yes, sir.

Q. What products did he purchase?

A. He purchased several different products and he bought fan belts from me and I had a man come down from Trenton to resleeve them.

Q. What brand?

A. Thermoid belts.

Q. Who was the man who came from Trenton?

A. A representative of the Thermoid Rubber Company.

Q. Is their factory in Trenton?

A. Yes.

Q. What happened after that?

A. The next time I got there, they were all back to Goodyear again.

Q. Did you have any conversation with Mr. Lott concerning Thermoid products?

A. He asked me as a personal favor, he said, it embarrassed him for me to come in there and asked me as a personal favor would I desist and I said sure.

Q. So thereafter he did not purchase any TBA from you?

A. No.

Q. Why would it embarrass him for you to go in there?
Mr. Thompson: I object, sir.

897 By Mr. Kelaher:

Q. What was the substance of his conversation?

A. I am afraid I couldn't repeat it at the moment.

Q. Did you at one time call on a Gus Mapes?

A. Well, Gus Mapes, I used to go to Ocean City every summer and I have known him for many many years. And if he wanted to buy a few things, he would drop me a line, and when I went to the seashore, I would take them to him.

Q. Did he purchase Lee tires?

A. Yes.

Q. Exide batteries?

A. Yes.

Q. Car wash?

A. I sold him Speedy car wash, which can be used as a car wash.

Q. Did he continue to purchase those products from you?

A. No, he stopped.

Q. Did he give you a reason why he stopped?

A. He said that the supervisor there had really given him quite a hard time.

Q. The supervisor for which company?

A. Atlantic Refining Company.

Mr. Thompson: If your Honor please, this testimony is of course taken not to prove the fact, but really as state of mind testimony. Otherwise, of course I object to it.

898 Hearing Examiner Kolb: I think it is all right.

By Mr. Kelaher:

Q. Did Mr. Mapes make reference to any particular—

Mr. Thompson: Would you mind confining this—the acoustics in this room are rather bad and I have heard that name several times, but I haven't gotten it.

• The Witness: Mr. Mapes, M-a-p-e-s.

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. Mr. Mapes, did he state the name of the Atlantic representative?

A. Why, he used the name of Mr. Kramer.

Q. Who was Mr. Kramer?

A. He was assistant supervisor in New Jersey, as I recall.

Q. Do you recall who he was assistant to?

A. Mr. Esbach.

Q. Mr. Heald, about what time did this incident occur?

A. This was in 1953.

Q. 1953?

A. Yes.

Q. And did Mr. Mapes discontinue purchasing the TBA from you?

A. Yes.

Q. Do you recall calling on a Lloyd Martin, Rising Sun Avenue and Godfrey Street, Philadelphia?

899 A. Yes.

Q. Did you sell TBA products to Mr. Martin?

A. I sold him quite a little.

Q. What type of products did you sell him?

A. Oh, generally most everything I had, until he approached me about—he had some obsolete radiator hoses, Thermoid hoses and he told me if I would arrange with the Thermoid factory, so he could exchange it for the more modern type of hose, he would buy fan belts from

me and they agreed to send a man down to resleeve them and the next time I got there, it was all Goodyear again.

Q. When you talk about resleeving, you are referring to the change of brand name?

A. That is a practice in the business.

Q. Mr. Martin, did he continue to purchase TBA from you?

A. No. He said the pressure was too much.

By Mr. Kelaher:

Q. Do you recall the conversation he had with you?

A. I don't think so.

Q. Do you recall when he stopped purchasing TBA from you?

A. It was in 1952.

901 By Mr. Kelaher:

Q. Getting back to Mr. Martin. What TBA products was he carrying at the time he made this statement to you?

A: Well, he was carrying Goodyear tires. I never sold him any tires, nor batteries, but I sold him practically everything else.

Q. Was he carrying the Goodyear TBA line?

A. Yes, sir.

Q. And did he have Goodyear identification on his station?

A. Oh, yes.

Q. Now, do you recall soliciting the business of a Bob Rockfeller, Carlisle and Hunting Park Avenue, Philadelphia, Pennsylvania?

A. Yes, sir.

Q. And did you sell any TBA products to Mr. Rockfeller?

A. I sold him only car wash.

Q. And how were such deliveries made?

A. By truck.

Q. Did Mr. Rockefeller always accept delivery when you brought the car wash?

A. Well, there was one time when I delivered it he just waved me out and afterwards he told me the Atlantic salesman was in there.

Q. Well, when he waved you out did you go out and return later?

902 A. I just didn't go in, he just waved through the window.

Q. Now, do you recall soliciting the business of a Denny Denshaw, Decatur and Frankford Avenues, Philadelphia, Pennsylvania?

A. Yes, I did.

Q. Did you sell TBA products to Mr. Denshaw?

A. Yes, I did.

Mr. Thompson: Is this Denshaw, Benshaw, Henshaw?

Mr. Kelaher: Denshaw to rhyme with Denny.

The Witness: I sold him about everything.

By Mr. Kelaher:

Q. He bought Lee tires and Exide batteries?

A. Yes.

Q. Did he stop buying TBA from you?

A. Yes, he did.

Q. And did he give you a reason for stopping?

A. Well, in April of '52 he gave me an order for 200—
I think I have a memorandum on it here. April the 12th, \$222 and he called me up and told me—

Q. What did that consist of?

A. It was tires and batteries only.

Q. Lee tires and Exide batteries?

A. That's right.

Q. He called you—will you proceed?

A. He called me up and told me that there were 903 four Atlantic men over there and told him to send the tires back and asked me if I would mind. In the meantime by the time I got there he had sold some, but I took back merchandise to the extent of \$162 rather than embarrass him.

Q. And thereafter, did Mr. Denshaw stop buying from you?

A. Very little, practically none.

Q. And what TBA was Mr. Denshaw selling in his station primarily?

A. Well, he was not selling the Goodyear filters, he was selling Fram filters which I was selling him.

Q. Was he selling Goodyear tires?

A. Yes, he had Goodyear tires.

Q. Was he selling Goodyear batteries?

A. No, he didn't have Goodyear batteries, he eventually did.

Q. What identification did he have in his station?

A. Well, of course all the Atlantic-owned stations have the Goodyear identification.

Q. Approximately how many Atlantic stations did you at one time sell to?

A. Well, I would say in the neighborhood of 20, possibly more.

Q. And did you lose the business of—

A. I lost them all eventually.

Q. Who were the Goodyear TBA supply points in 904 the area in which you served?

A. There was one in Westville.

Q. Westville, New Jersey?

A. Yes.

Q. Do you recall his name?

A. It was John something—his last name escapes me. There was one in Germantown.

Q. Would that be Mr. Glenn?

A. Yes.

Q. Was Mr. Parris a supply point in your area?

A. No, I didn't sell in his territory.

Q. How about Mr. Miller? E. Miller.

A. I didn't sell in his territory.

Q. Well, Mr. Heald, you stated that all Atlantic Service stations carry Goodyear TBA identification, is that correct?

A. Well, that was my experience.

Q. I mean based on your experience.

A. Based on my experience.

Q. Based on your experience at the time you were TBA supervisor for Atlantic what identification did Atlantic stations carry?

Mr. Thompson: I couldn't hear your question, Mr. Kelaher. The acoustics are bad.

(The reporter read the pending question.)

The Witness: They carried Exide when I was there.

905 By Mr. Kelaher:

Q. And Lee tires?

A. Yes.

Q. Based on your experience was there a change-over in that market area from Lee tires and Exide batteries to Goodyear TBA?

A. Yes.

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: Cross examine.

Mr. Thompson: May we have a minute to confer with counsel?

Hearing Examiner Kolb: Yes.

Mr. Correa: May we have a moment's recess, if your Honor please?

Hearing Examiner Kolb: Yes. We'll take a recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, before cross begins I have one further question to ask the witness.

By Mr. Kelaher:

Q. How long did F and C Automotive Specialties, Inc., remain in business?

A. Four years.

906 Q. Do you recall the termination date or approximately the termination date?

A. January 31, '55.

Mr. Kelaher: That's all, your Honor.

Cross-Examination by Mr. Thompson.

Q. Sir, you tried to sell in quite a large geographical area, did you not?

A. Fairly so, yes.

Q. It's a pretty big territory, isn't it, all the way from Morrestown down to Delaware county?

A. I didn't sell in Delaware County, I think I stated that.

Q. I thought I understood you to say that was when you were with Atlantic. You tried to take Montgomery, Philadelphia, and Bucks County?

A. That's right. The explanation of that, I worked generally around home and one day a week I went over to Jersey.

Q. But you worked generally around your own home and spent one day calling on accounts over in New Jersey?

A. That's right.

Q. Sir, weren't you slightly undercapitalized in this business?

A. Yes.

Q. And you were handling your deliveries with one
907 station wagon, I think you said?

A. That's right.

Q. That is a pretty tough deal to compete with the big wholesalers, isn't it?

A. It is. Of course, my son went with me in the beginning and I was relying on a fast start and I did get one but he was called back and sent to Korea after three months. That left me with the business.

Q. He was a lieutenant in the Marines, wasn't he?

A. Air Force.

Q. You know, of course, you are awfully well thought of down in Atlantic?

A: I hope so. I think well of them.

Q. There are a lot of nice things in the file about you.

A. Good.

Mr. Thompson: That's all I have, sir.

Mr. Correa: I have no further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all Mr. Heald.

(Witness excused.)

Hearing Examiner Kolb: Is that all you have?

Mr. Kelaher: Yes, your Honor.

Hearing Examiner Kolb: Before we adjourn I would like to correct a ruling that I made on the record yesterday with reference to Mr. Correa's objection, I believe, to Commission's Exhibit No. 306-A, in which I admitted the document subject to objection.

Of course, that can be considered two ways. One of them is that I have overruled the objection but by specifying it might be interpreted as being a right to make a motion to strike later on in the case, I don't want to have that impression left, so I wish to strike that provision and subject to objection and simply overrule Mr. Correa's objection to the document.

Mr. Correa: And I take it, so that the record may be clear, your Honor understand that so far as we are con-

cerned, speaking for the respondent Goodyear, our objection still stands of record.

Hearing Examiner Kolb: Your objection stands of record.

Mr. Correa: And the evidence is received over our objection?

Hearing Examiner Kolb: Over your objection.

Mr. Correa: And furthermore, on the matter of motion to strike, we conceive it to be our right to make a motion to strike any evidence which has been received over our objection at any time when we could conceive there to be grounds for such a motion.

Hearing Examiner Kolb: But I am not inviting 909 such a motion.

Mr. Correa: I understand. We don't always need an invitation, if your Honor please.

Hearing Examiner Kolb: The hearing is adjourned until 9:00 o'clock tomorrow morning.

911 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, at the close of the direct examination of Mr. Connell, the Vice President of the Electric Storage Battery, day before yesterday, I reserved the right to cross-examination and intimated at the time that if staff counsel were not planning to call Mr. Findley of the Storage Battery Company, I would probably waive cross-examination.

In view of the fact that Mr. Kelaher stated yesterday that they were not calling Mr. Findley, I will waive cross-examination of Mr. Connell.

Mr. Correa: And I will also, if your Honor please.

Hearing Examiner Kolb: He is not expected to return.

Mr. Dias: No, he is waiting on call, as I understand it.

Mr. Correa: I think that is the way it was left.

Mr. Kelaher: Mr. Examiner, before we call a witness, it has been stipulated between counsel as to Mr. Heald, who was a witness yesterday, if he were called he would testify that the F&C Automotive Specialties, Inc., was located at 1201 York Road, Abington, Pennsylvania.

I would like to call Mr. Marabella.

912 JOSEPH MARABELLA was called as a witness for the Commission and, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Joseph Marabella; my home address is 31 King Avenue, Folcroft, Pennsylvania.

Q. Are you associated with V. J. Auto Parts Company?

A. Yes, sir.

Q. And what is your position with V. J. Auto Parts?

A. Partner.

Q. And who is your partner?

A. My brother, Vincent.

Q. And where is your firm located?

A. 1516 Chester Pike, Folcroft, Delaware County, Pennsylvania.

Q. Have you always been at that location?

A. No, sir. In March of '56 we moved from 111 Sharon Avenue, in Sharon Hill.

Q. And when did your firm begin business?

A. January 2, 1951.

Q. And you were at 111 Sharon Avenue from that time until—

A. Until March of '56.

Q. And from March of '56 to date you are at the 913 present location.

A. Yes, sir, at the present location.

Mr. Thompson: Mr. Kelaher, would you mind identifying where Folcroft is? Is that in Delaware County?

The Witness: It is in Delaware County; it is on the Chester Pike.

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. Would you please describe the principal products sold by your company?

A. Yes, sir.

Well, the biggest percentage is hard parts. By that I mean the mufflers, tail pipes, ignition, and so forth, and then our next biggest line is our chemical or what would be referred to as TBA items.

Q. Do you carry batteries?

A. Yes, sir.

Q. What brand?

A. Delco batteries.

Q. And what items in the chemical line do you carry?

A. Your DuPont line; simonize; Johnson products; Bars Leak, which is one of our biggest items, we are distributor on it.

Q. Spark plugs?

A. Yes, sir. A. C., Auto Lite.

Q. Do you sell filters?

914 A. Yes. Fram and AC.

Q. Do you sell belts and hoses?

A. Yes, sir. We are distributor on the Raybestos line.

Q. Tires?

A. Yes, sir, tires and tubes.

Q. What brand of tires?

A. The Mansfield tires and L&D tubes.

Q. Who makes the L&D tubes?

A. The Mansfield people do.

Q. Is that the Mansfield Tire and Rubber Company of Mansfield, Ohio?

A. Yes, it is.

Q. In what area does your company solicit business?

A. Well, we cover thoroughly 10-mile radius of the store.

Q. And where would—would you describe that in more detail?

A. Well, first of all, the store is midway between Philadelphia and Chester and it would take in, I'll say, 75 percent of Delaware County; all of your Upper Darby area and all of your Chester area through Springfield.

Q. Do you stay solely in Delaware County?

A. No, we solicit business in North Philadelphia, and South Philadelphia, and so forth. Those are fellows who have given us the backbone of our business from the time we started out.

Q. I see.

915 A. But the biggest percentage of our business comes from that 10-mile radius right in Delaware County.

Q. And how many salesmen are employed by your company?

A. Two, sir.

Q. And does that include yourself?

A. That includes myself, yes, sir.

Q. And aside from yourself, how is your other salesman compensated?

A. Salary and commission; expenses.

Q. You have delivery trucks?

A. Yes, sir.

Q. How many.

A. Three trucks.

Q. And is your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Yes, sir.

Q. Now, would you please describe the classes of customers to whom you sell?

A. Car dealers, fleets, independent repair shops and service stations; contract and lessees.

Q. Are there any Atlantic service stations in your company's marketing area?

A. Yes, sir. I would say, oh, 25 to 30 in the area.

Q. Of that number do you know approximately how many own their own stations?

916 Mr. Thompson: I didn't hear the answer to the first question.

Mr. Kelaher: Of that number—you didn't hear the answer?

Mr. Thompson: The answer to the first question.

The Witness: I believe there is 25 to 30 Atlantic stations in that area that we actively solicit.

By Mr. Kelaher:

Q. Of that number do you know how many own their own stations?

A. To my knowledge I would say no, but I do know of three who do, and there may be more. But I do know positively three.

Q. Three of the 25 to 30?

A. Yes.

Q. And are the remainder company-owned stations?

A. Yes, I believe so, to my knowledge.

Q. Do you solicit business from Atlantic service stations?

A. Yes, sir; actively.

Q. And how frequently do you solicit such business?

A. Those fellows in our trading area are called on once a week.

Q. Do you call on all the 25 to 30 you have mentioned?

A. Yes, sir; every one in our area is actively solicited every week.

Q. What products do you sell to Atlantic service stations?

A. Well, there is a big problem. They will call us 917 for a nut and a bolt. We will deliver it. We sell primarily hard parts, but items that are to eventually end up on their shelves as stock, that is just only on a fill-in basis.

By Mr. Kelaher:

Q. Do you sell TBA items to Atlantic service stations?

A. No, sir, only on a fill-in basis.

Q. And are TBA items customarily stocked on the shelves or displayed on the shelves?

A. Yes, sir.

Q. And did you at one time solicit the business of Atlantic lessee dealer, Elmer Booz, Wycombe and McDade Boulevard, Darby, Pennsylvania?

A. Yes, sir, I did myself.

Q. Were you able to sell him TBA items?

A. For a period we were able to sell him some AC oil filter cartridges; that was the extent of the TBA that we were able to sell Elmer, and that went on I'd say for a five or six month period, and he in turn informed me that he could not buy any more from us.

Mr. Thompson: Just a minute. I move the last answer be stricken on this ground: Mr. Booz has testified in 918 this case. The only possible relevance of the question and answer would be to ascertain Mr. Booz's state of mind. Had Mr. Kelaher desired to ascertain that fact, he could have asked Mr. Booz.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Kelaher: Would you read Mr. Marabella's answer, please?

(Answer read.)

Mr. Correa: I move to strike the answer, if your Honor please, on the grounds stated by Mr. Thompson, and it is patently unresponsive to the question.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. At or about what time did Mr. Booz start purchasing AC oil filter cartridges from you?

A. Spring of 1954.

Q. And do you recall the conversation you had with Mr. Booz at that time?

A. To a certain extent, yes.

Q. Would you state the conversation?

Mr. Correa: I object to the conversation, if your Honor please, on the grounds stated by Mr. Thompson, and on the additional ground that counsel apparently is seeking to impeach a witness whom he has offered and for whose 919 credibility he has vouched, because I could conceive of no other purpose of the question he has now put to the witness.

Mr. Kelaher: Just so the record will be clear, we are attempting to confirm the testimony of Mr. Booz.

Hearing Examiner Kolb: The objection will be overruled.

A. Well, as was my usual practice, I would go in and on items that Elmer stocked, would try to solicit his business, and at this particular time I went back in and checked his oil filter cartridges, and I saw he was low on some numbers. I marked them down and proceeded to try to obtain an order on the cartridges. Elmer said, "Well, Joe, I am sorry, but I must discontinue buying those cartridges from you." Well, I said, "Well, gee, you have been buying them for a short period of time, I realize. Would you mind telling me why?" He says, "Well, I am getting some pressure and that is as far as I can go."

Q. Did he say who was applying the pressure?

A. He said it was coming from Atlantic Refinery.

Q. And do you know who the supplier was who then sold him AC filter cartridges?

A. I believe it was the TBA distributor in the area, Mr. Parris.

Q. Now, did you sell an item called Bars Leak to Mr. Booz?

A. Yes, I did.

920 Q. And did you ever have any conversations with him with respect to Barsleak?

A. Yes, I did.

Q. Would you state the approximate time of the conversation?

A. Well, that was about the same time, which was in the Spring of 1954. Elmer had been buying it and doing a nice job on it. He had bought three or four cases and sold it. So I noticed that he was low on that, and I asked him, how about another case of Barsleak for stock, and he proceeded to tell me that if he bought it he would have to put it in the back room. He couldn't display it any more because he was told by his Atlantic representative, salesman, to take it off the shelf and only put the line which was carried by Atlantic on the shelf.

So he said, "If I have to hide it in the back room, I would lose half of its salability, so why should I continue to buy it?"

Q. Was Mr. Booz carrying the Goodyear TBA line?

A. Yes, sir.

Q. Did you attempt to sell tubes, or DuPont chemicals to Mr. Booz?

A. Why on the tubes, I had given that up as a bad job, but the DuPont chemicals, yes. And all we ever got on the DuPont chemicals from Elmer was, as I refer to, we refer to in the business as fill-ins, where he needed a dozen
921 or a case of an item. We could not get any spring or fall orders.

Q. Did he ever give you any reason for not purchasing?

A. Yes. He told me he had to buy it from Atlantic.

Q. Did you solicit the business of Mr. Iocona, former Atlantic dealer in Secane, Pennsylvania?

A. I myself did personally, yes, sir.

Q. And were you able to sell any TBA items to Mr. Iocona?

A. No, sir. Just as I mentioned, on a fill-in basis.

Q. Did you solicit Mr. Iocona on business on Barsleak?

A. Yes, sir; that was another one.

Q. Did you sell him Barsleak?

A. Yes. I had been selling him Barsleak for, I'd say about a year, and he had been doing a nice job with it. And he also had to stop buying it.

Mr. Thompson: I move the answer be stricken.

By Mr. Kelaher:

Q. Did you have any conversation as—

Mr. Thompson: Mr. Kelaher—

Hearing Examiner Kolb: Read that last sentence.

Hearing Examiner Kolb: The motion to strike is denied.

Mr. Thompson: Your Honor did not hear the sentence to which I objected. It was the sentence before that.

Hearing Examiner Kolb: Read the whole sentence.

(Question and answer read.)

922 Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Did you have any conversations with Mr. Iocona with respect to Barsleak?

A. Yes, sir.

Q. And what was the conversation?

Mr. Thompson: That is objected to on the same ground I objected to the state of mind testimony about the prior witness, Mr. Booz.

Mr. Correa: And I join in the objection, if your Honor please, and submit this is a perfectly outrageous procedure, calling a witness such as this to testify concerning statements allegedly made by other people who have been called on the witness stand who gave no such testimony whatever.

No. I have never heard of any procedure like that being followed in any court, and I object to it and—

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. I will restate the question.

Did you ever have any conversations with Mr. Iocona as to why he stopped purchasing Barsleak?

A. Yes, sir; more or less along the same lines as Mr. Booz. He told me he in turn was told to remove it from his shelf.

Q. By whom?

923 A. By his Atlantic representative.

Mr. Thompson: May it be understood, sir, so that I won't be needlessly repetitious, that my objection applies to this entire line of testimony?

Mr. Correa: And may mine also apply?

Hearing Examiner Kolb: It may apply. The objection will be overruled.

By Mr. Kelaher:

Q. Can you state the approximate time of your conversation with Mr. Iocona?

Mr. Thompson: I can't hear you.

(Question read.)

A. Yes, sir. That was also—well, there was two conversations, one was in the spring and then prior to the fall season, anti-freeze season, of '54. Both were in 1954.

By Mr. Kelaher:

Q. And both were connected with the Barsleak?

A. Absolutely, yes, sir.

Q. Did you at one time sell simonize products to Mr. Iocona?

A. Yes, sir.

Q. Can you state the approximate time when such sales were made?

A. Well, that was also in the early part of '54 when we were actively soliciting Mr. Iocona's business.

Q. And did he continue to purchase Simoniz from you?

924 A. He did for approximately, I'd say a three-month period; he had bought one complete order and then informed me that he would have to stop buying Simoniz.

Q. And did he give you a reason why he would have to stop buying Simoniz products from you?

A. The same reason that most of these other fellows have given us whenever they have stopped buying any merchandise from us, pressure from Atlantic.

Q. Have you attempted to solicit tube business from Atlantic dealers?

A. Yes, sir; myself, I have.

By Mr. Kelaher:

Q. Do you recall, or did you solicit the business of Carmen's Atlantic, South Avenue and Providence Road, with respect to the sale of tubes?

A. No, I myself did not, Mr. Kelaher. That is our other salesman who did that.

Q. Who would that be?

A. Jerry Tarquinio.

Q. Did you yourself solicit the business of any
925 Atlantic dealer with respect to tubes?

A. Yes, I did.

Q. And do you recall any instance with respect to such solicitation?

A. Yes, sir; on the tubes themselves the boys have told me that they would be glad to use us in a back order situation or a fill-in, but they could not give me or our company an order on L&D tubes.

Mr. Thompson: I move the answer be stricken, unless there is identification.

Hearing Examiner Kolb: Mr. Kelaher, I wish you would either follow through with your identification, which I assume you will—

Mr. Kelaher: That is correct.

By Mr. Kelaher:

Q. When you state "the boys," to whom are you referring?

A. I am referring to Jack Chambers; I am referring to Elmer Booz; I am referring to Andy Iocona; those fellows in particular.

Mr. Thompson: It is understood that the same objection I made before applies to Mr. Jack Chambers, who was also a witness.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Such conversations were held with these gentlemen when they were Atlantic dealers?

A. Absolutely; yes, sir.

Q. Have such statements been made to you on more than one occasion?

A. Yes, sir.

Q. And could you fix the approximate time of such statements?

A. Well, Mr. Kelaher, most of this problem that did

arise started in the spring of '54, through '55 and '56, up to the present, but the particular instances in my mind, two are in the fall of 1954 with Mr. Chambers and Mr. Booz, Mr. Iocona, you might say the latter part of '54.

Q. And did you solicit Barsleak business from Mr. Chambers when he was an Atlantic lessee-dealer?

A. Yes, sir.

Q. And was he at that time located at Sharon Hill, Pennsylvania?

A. Yes, sir.

Q. And did Mr. Chambers purchase Barsleak from you?

A. Yes, sir.

Q. And what was your experience with respect to the sale of Barsleak to Mr. Chambers?

A. My, well, business relations and experience with Mr. Chambers had been the same as with the other gentlemen I have mentioned, enjoying good business relations, good sales on Barsleak, up until the time he was told to remove it from his shelf, and he gave me the same answer that the other fellows had given me.

Q. When was that?

A. That was in the fall of 1954.

Q. Now, do you recall who succeeded Mr. Chambers at the Sharon Hill station?

A. A fellow by the name of Crum, Fred Crum.

Q. And did you solicit the Barsleak business from Mr. Crum?

A. Yes, I did.

Q. And what was your experience with respect to that?

A. Well, we succeeded in selling Mr. Crum, and I believe it was two or three cases we had sold him, and he also ran into the same road block. He was told to get it off of his shelf.

Q. And do you recall the approximate date of that conversation?

A. That was in '55, the latter part of '55.

Mr. Thompson: Would you be kind enough, Mr. Kelaher, to proceed with the identification to save me the trouble of moving to strike?

Hearing Examiner Kolb: I will ask counsel to make a motion to strike after he has done that.

Mr. Thompson: Yes, sir, before you rule. If I let a question go by, I have lost the opportunity.

Hearing Examiner Kolb: On this identification, you 928 still have your rights.

Mr. Thompson: You will be lenient then in that situation.

By Mr. Kelaher:

Q. Have you solicited DuPont, Johnson, or Simoniz product business from a Carmen's Atlantic?

Mr. Thompson: I move the testimony with respect to Mr. Carmen be stricken because of lack of proper identification of the alleged conversation.

Mr. Kelaher: Mr. Examiner, I am continually interrupted; I am giving specific dates, names, products, if counsel can be patient.

Hearing Examiner Kolb: It might save a few objections if you ask if you had the conversation and when you had the conversation, and then the substance of the conversation; that will end all of the objections, rather than getting the time after the witness has testified what the conversation was.

Mr. Thompson: That is right.

Mr. Kelaher: Well, I would do that if I am first permitted to lay a foundation for the questions.

Mr. Thompson: Have you departed from Mr. Crum? Because you laid no foundation for his alleged state of mind.

Mr. Kelaher: I thought that was sufficiently covered.

By Mr. Kelaher:

Q. Are you familiar with, or did you solicit the 929 business of a Carmen's Atlantic, and if so, would you please state the location of the station?

Mr. Thompson: May I renew my motion to strike the alleged statements of one Mr. Carmen for lack of proper identification?

Hearing Examiner Kolb: I believe he said the conversation took place in 1954, did he not?

Mr. Thompson: I think—I do think he said sometime in 1954; there was no identification.

The Witness: 1955.

By Mr. Kelaher:

Q. Mr. Marabella, would you please state when your conversation with Mr. Crum took place?

A. 1955.

Mr. Thompson: May we have where?

The Witness: In Sharon Hill.

By Mr. Kelaher:

Q. Where is the station?

A. Sharon Hill.

Q. Location?

A. Clifton Heights and Chester Pike, in Sharon Hill, Fred Crum's Atlantic.

Q. And will you give us the location of Carmen's Atlantic station?

A. Carmen's Atlantic, South Avenue and Providence Road, Secane, Pa., Delaware County.

Q. Did you solicit TBA business from Carmen's Atlantic?

A. I did, yes, sir.

Q. And would you please state what your experience has been; if you had any conversations, when they took

place and if they took place, the location of the conversation.

A. Yes, sir.

I had a conversation with Carmen in the spring of 1956 in his station, South Avenue and Providence Road, in Secane, concerning the spring program for DuPont chemicals. Carmen told me himself he would like very, very much to give me the order but that he had already been solicited by Atlantic and he had been more or less forced to promise them the order. I asked him to elaborate and he came out with the same thing that everyone else has come out with, which is pressure.

Q. Are you familiar with the location of Don Elko's Atlantic station?

A. Yes, sir.

Q. And where is that located?

A. That is the station at Clifton Avenue and Chester Pike in Sharon Hill, that has had three or four dealers since it was built.

Q. Now, at the time Mr. Elko was there, please state whether or not you solicited TBA business from Mr. Elko; whether or not you had any conversations with Mr. Elko with respect thereto, and if so, the approximate dates of the conversations and the locations of the conversations.

A. Well—

Mr. Thompson: I congratulate you, Mr. Kelaher, that is a splendid question.

A. Very frankly, on that particular account, it is covered by our other salesmen, but I myself had a personal contact, personal solicitation on the TBA item, namely Delco batteries, in January of this year, 1957; that took place in Don Elko's station. I solicited along with the Delco battery man his battery business, and he just threw up his hands. He said, "Joe, I would like to buy the bat-

teries from you, but you know what I have been running into and what every other Atlantic man has been running into. I cannot put anything but a Goodyear battery in this place. If I don't have a battery I will be more than glad to buy it from you because I know you can give me the service and the price is right."

By Mr. Kelaher:

Q. Now, I take it you were unable to sell Delco batteries to Mr. Elko?

A. Absolutely.

932 By Mr. Kelaher:

Q. Did you at one time solicit the Bars Leak business from Mr. Elko? If so, please state when such solicitation took place; whether or not you made such sales; whether or not you had any conversations with Mr. Elko. If such conversations were held, the approximate date of the conversation and the approximate location of the conversation.

Mr. Correa: I submit, your Honor, that is not a question; it is a questionnaire.

Mr. Kelaher: We would be very happy to save the time, Mr. Examiner—

A. Mr. Kelaher, I make it a practice to call on a fellow when he takes over a new station, no matter what company he is with. And I went out to see Mr. Elko the latter part of January, 1957. I acquainted him with the
933 prices of the various products that he had on his shelf, and I also solicited actively in his station on Clifton Avenue and Chester Pike in Sharon Hill, the sale of Bars Leak. He bought it and re-ordered. He was also told by his Atlantic representative to take it off the shelf. He refused and told the Atlantic man that it was better than the other product, and he was going to continue to keep it on the shelf, and to this day he still has it on his shelf.

By Mr. Kelaher:

Q. Could you give us the approximate date of your call on Mr. Elko when he opened the station?

A. That particular—that was not the opening of the station, that was in the latter part of January of '57, which was on this Bars Leak.

Q. I see.

A. And he had already opened.

Q. I see.

A. See, that particular account is in my other salesman's territory but I make it a point to go out and have personal contact in the, you know, near future, when a fellow has opened a station and go out and introduce myself and so forth.

Q. you stated that you sell Delco batteries. In what category or what category distributor are you for Delco?

A. Why, we are a warehouse distributor on Delco batteries; we received that distributorship in January, 1957.

934 Q. And do you purchase such batteries direct from the company itself?

A. United Motors, yes, sir.

Q. And as a wholesale distributor, what lots do you purchase in?

A. Three, four, five hundred at a time.

Q. Have you attempted to sell Delco batteries to John Branca, Yeadon, Pennsylvania?

A. No, I did not solicit that, that was solicited by my other salesman.

Q. And did you as a result of any conversations with Mr. Branca—

A. Not particularly on that, no.

Q. Did your company sell Delco batteries to Mr. Branca?

A. Not on a stock basis, no, sir.

Q. And did your salesman report to you the reasons why he was not selling on a stock basis?

A. Yes, sir.

Q. What did he report?

A. Only stocking Goodyear batteries; that was also in January of '57. We worked the whole week with the Delco battery representative.

Q. Have you attempted to sell, or have you solicited TBA business from new Atlantic service stations or Atlantic service stations with new operators?

935 A. Well, as I said, we do make it a practice of going out to these boys whether they are a new operator or—I mean a new station or a new operator taking over an old location, but all the initial order of stock or merchandise that would go on the shelf does come from Atlantic. We ourselves cannot break in on that.

Q. When you say it comes from Atlantic are you referring—

A. TBA distributor.

Q. Is that Mr. Parris in all these instances?

A. In all these instances in our area, yes, sir.

Q. And the stations you have reference to is, what type of identification is on the station, as to outdoor signs?

A. Well, the Atlantic and the Goodyear signs.

940 Q. And did the conversations with the Atlantic dealers you have named—

A. (Interposing.) Yes, on the property, the location of the station.

Q. What has been your experience with respect to the sale of Mansfield tires in Atlantic stations?

A. Just on a fill-in basis, no stock orders whatsoever.

Q. And have any reasons ever been given you by Atlantic dealers for buying on a fill-in basis?

Mr. Thompson: Please go on and state the rest of the question.

A. Yes, sir; there's definite reasons given.

By Mr. Kelaher:

Q. Now, would you give us the details and I will state it briefly: Give us the details as to such conversations.

A. Well, in the latter part of 1954 with Mr. Booz, 941 Elmer Booz, Wycombe Avenue and MacDade Boulevard in Darby, I along with a Mansfield tire representative went in to solicit some of Mr. Booz' tire business. He said, "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes." And that was the extent of the conversation.

Q. Do you recall any other conversations with Atlantic dealers along similar lines?

A. Jack Chambers, we solicited him the same day at his station which was Clifton Avenue and Chester Pike in Sharon Hill, in his office, told us he was sorry to waste our time but more or less the same manner, that he couldn't put anything but Goodyear in there.

Q. Now, you stated that your company sells so-called hard parts. Are you able to sell hard parts to Atlantic stations?

A. Yes, sir; there is a—and that's a situation where the fellows do use us for delivery service, they are now allowed to do minor repairs, consequently they do call upon us for deliveries on mufflers, tail pipes and so forth, and we have no problem whatsoever soliciting their business on that.

Q. And you have no problem in selling them hard parts, is that correct?

A. No, sir.

942 Mr. Thompson: I couldn't understand the question, I'm sorry, would you mind repeating the question?

(The reporter read the question.)

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb. Cross-examine.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Cross-Examination by Mr. Thompson.

Q. Mr. Marabella—

A. Yes, sir.

Q. For identification I represent the Atlantic Refining Company in this case and the extremely handsome gentleman across the way represents the Goodyear Company.

Your business has progressed pretty well since you started it in '51 on an over-all basis, has it not?

A. Yes, sir.

943 Q. The gross sales have been increasing rapidly—

A. Yes, sir.

Q. And also your profit, have they not?

A. Not as much as we'd like them to, sir.

Q. Isn't that so of all of us?

A. I don't know.

Q. When were you first interviewed by a representative of the Federal Trade Commission about tires, batteries and accessories?

A. Three months ago.

Q. That was the first time the Federal Trade Commission called on you?

A. Yes, sir.

Q. And that would have been, then, about March of this year?

A. Yes.

Q. Have you discussed your testimony in this case with Jack Chambers, Elmer Booz, and Andy Iacona?

A. I haven't even talked to those fellows.

Q. So you don't know what they testified to when they were on the stand?

A. No, sir.

Q. Did I understand you to say that you can't sell orders for stocking of accessories at any of the Atlantic stations?

A. Yes, sir.

Q. You solicit them all, do you?

944 A. In our trading area, yes, sir.

Q. Does your trading area go out as far as Lynwood?

A. No, sir.

Q. I suppose that it obviously covers MacDade Boulevard?

A. Yes, sir.

Q. Do you solicit Ed Holmes?

A. Yes sir.

Q. Does he stock your accessories?

A. Ed Holmes, isn't he a contract station?

Q. I'm asking the question, Mr. Marabella. My question was whether you solicited him and whether he stocked your accessories which he bought from you?

A. When you speak of accessories you are referring to chemicals, sir. No, he does not buy those from me.

Q. How about Mansfield tires?

A. No, sir.

Q. Hard parts?

A. Yes, sir.

Q. Is he one of the Atlantic dealers who said that because of pressure he couldn't buy accessories from you or tires?

A. No, sir.

Q. Did he ever make any such remarks at all?

A. No, sir.

Q. Now, why can't you sell him tires and why can't you sell him accessories?

945 A. On the tubes I sell Mr. Holmes. I sell Mr. Holmes tubes.

Q. Why can't you sell him accessories?

A. Well, I believe that Mr. Holmes is a pretty fair minded man and he splits his business up.

Q. Among a lot of—

A. Jobbers.

Q. Among a lot of jobbers?

A. Yes, sir.

Q. Don't a great many of the Atlantic accounts do precisely that?

A. Not on TBA items, sir.

Q. Why not?

A. I wish I knew the answer to that.

Q. You don't know why Mr. Holmes doesn't buy TBA from you?

A. No, sir.

Q. He's never given you any reason?

A. I have never actively solicited too much of his TBA.

Q. Does he buy from Ed Parris, do you know?

A. That I couldn't tell you, sir.

Q. As a matter of fact, you can't tell us whether any of these Atlantic dealers buy from Ed Parris, can you?

A. Oh, yes I can.

Q. How?

A. I see invoices.

946 Q. You mean the dealers show you the invoices?

A. No. The invoices are laying on the desk just like in any other business.

Q. Just laying on the desk?

A. That's all.

Q. Well, who else besides yourself does sell TBA to Atlantic dealers in your sales territory? Who are your competitors?

A. Well, as far as competitors go, whether or not they sell TBA to Atlantic, I don't know. You have got Auto Parts and Radiator, with a branch store in Folcroft, the main store in Chester; E. B. Krausen in Chester. You have got Chester Auto Parts; you have got Motor Parts Service in Norwood; Prospect Park, rather; you have got Clifton Automotive, Clifton Heights, Pennsylvania, all actively soliciting in the area plus all the Philadelphia jobbers who travel out to the Chester Pike area, Gaul, Derr and Shearer.

Q. In—by and large do all of those dealers call on all of those stations?

A. Yes, sir.

Q. There must be a parade of jobbers into a station every day.

A. I have had it said to me that's all they do, is interview salesmen all day long.

Q. I have had it said to me, too, Mr. Marabella.

Chester Auto Parts, did you mention that, Mr. Wet-
947 zell's Company?

A. Yes, sir.

Q. Does your sales area go out as far as Morton?

A. Yes, sir.

Q. How about Walter McCullough. Do you solicit his account?

A. Yes, hard parts.

Q. Is that all you get from him?

A. That's right.

Q. Did he ever tell you why he doesn't buy tires, batteries and accessories from you?

A. Never personally, because I don't call on him.

Q. Your other salesman does, but your firm has never been able to sell him anything except hard parts?

A. We have sold occasionally on the chemicals on fill-in, but never what you would call a stock order, or batteries once in a while for delivery.

Q. Has your salesman ever reported to you why Mr. McCullough doesn't buy TBA from you?

A. Sir, I have never really asked him why because I only have so many hours in a day and I have more or less resigned myself to the fact that unless, I don't think we'll ever sell Atlantic TBA so I don't even bother.

Q. Do you think Atlantic puts pressure on Mr. McCullough?

A. I don't know. I don't know what his status is.

Q. Except for fellows like Chambers and Hill and 948 Booz, do you really know the status of any of the people you have talked about?

A. Elko, Don Elko, he's a lessee.

Q. You mentioned him.

A. George Hill who was down on MacDade Boulevard in Darby is a lessee.

Q. He's an old friend. He's been here.

A. Sam Dubrow's in Darby, he's a lessee.

Q. You mentioned him, didn't you?

How about your relationship with the Minka Brothers station down in Chester. Where is that, Sixth and Morton?

A. Yes, sir; but we don't do anything about that.

Mr. Kelaher: Which was that?

Mr. Thompson: Minka—M-i-n-k-a.

By Mr. Thompson:

Q. Do you solicit that account?

A. Yes, sir. Actually they are right in the heart of three or four jobbers down there, and very frankly it would be foolish for those fellows to buy from us.

Q. They can get service right next door?

A. Yes, sir.

Q. Now, how about Sharon Hill Garage. That is a pretty big outfit?

A. Yes, sir.

Q. Do you deal with them?

949 A. Yes, we do.

Q. Do you sell them TBA?

A. Occasionally, yes.

Q. Do they stock Mansfield tires?

A. No, sir.

Q. Do they stock any of the accessories bought from you?

A. They do, but it's more or less as I mentioned on a fill in basis. Most all of his TBA is on a—as I mentioned—it's more or less a fill-in basis from us. We get no stock orders from him at all, other than hard parts.

Q. Mr. Marabella, I have forgotten who is running that Sharon Hill parts—

A. Tom.

Q. Do you remember his last name?

A. I can't pronounce his last name, it's an Italian name.

Q. Can you spell it?

A. I can't spell it either.

Q. Tom something-or-other?

A. I'm Italian and I can't pronounce it.

Q. Do you call on him personally?

A. No, the other salesman solicits him.

Q. You don't know of your own knowledge why he doesn't stock your TBA items?

A. Not of my own knowledge, no.

Q. Have you had reports from your salesman?

950 A. Yes.

Q. What were the reasons reported?

A. Well, he tries to—as I said, I don't know what his

status is, but he does try to identify himself through what I have found myself with Atlantic and Atlantic TBA items.

Q. And you mean on Goodyear when you say Atlantic TBA items?

A. On some items, as I say I have only been down there to talk to him once or twice and other—the other salesman contacts him.

Q. I see.

How about Pachel out at Morton, is he one of your customers?—

A. No, the other boy contacts him.

Q. Do they stock or buy TBA from you?

A. No, sir; not from us; hard parts, yes.

Q. Has it been reported to you why?

A. No, sir.

Q. There has been no report to you of any Atlantic pressure on that account?

A. No specific report to me; no, sir.

Q. But nevertheless they don't stock your TBA, do they?

A. That's right, sir.

Q. Do you go out as far as Beothwyn?

A. No, sir.

Mr. Kelaher: Could I have that question reread?
951 (The reporter read the question.)

Mr. Kelaher: Would you mind identifying that in some way. We are strangers to Philadelphia and—

Mr. Thompson: Have you heard the answer? Perhaps you will lose interest when you hear the answer. The answer was "no."

Mr. Kelaher: I have lost interest.

By Mr. Thompson:

Q. Mr. Marabella, you referred to a store, do you people retail as well as wholesale? Do you sell over the counter at the store?

A. No, sir.

Q. So that the store is what, really headquarters, warehouse?

A. That's right, sir.

Q. By the way, are you selling Elmer Bodz TBA now?

A. To a certain extent down there, yes.

Q. Is he stocking Mansfield tires?

A. No, sir; he's stocking tubes.

Q. Stocking tubes, and how about accessories?

A. Yes, sir.

Q. Buying them from you?

A. I would like to elaborate one minute. When you asked about Mansfield tires, he's not stocking and none of these boys are, because I gave up the Mansfield line.

Q. When did you do that?

952 A. Two years ago, sir; the latter part of 1955.

Q. That's quite enlightening. I didn't realize that from your prior testimony.

A. All I did was get rid of what I had on hand.

Q. Did you take on another tire line?

A. No, sir.

Q. Now, you have three trucks which service an area which I understand to be a radius of about ten miles from your store?

A. Yes, sir.

Q. Do those three trucks provide adequate delivery service?

A. During the Pennsylvania state inspection period, which is at present, I have to get another truck.

Q. In other words, to do a job out there you would require about four trucks?

A. I would need another truck.

Mr. Kelaher: I beg your pardon. What was your answer?

The Witness: The way it's been so busy we'll need another truck.

By Mr. Thompson:

Q. You couldn't handle that business with one truck, could you?

A. Absolutely not.

953 Q. How about with just one station wagon?

A. No, sir.

Q. You'd be broke, wouldn't you?

A. Yes, sir.

Mr. Thompson: That's all I have.

Mr. Kelaheer: I would like to have the last series of questions and answers read.

(The reporter read the following questions and answers:

"Question: Now, you have three trucks which service an area which I understand to be a radius of about ten miles from your store?

"Answer: Yes, sir.

"Question: Do those three trucks provide adequate delivery service?

"Answer: During the Pennsylvania State inspection period, which is at present, I have to get another truck.

"Question: In other words, to do a job out there you would require about four trucks?

"Answer: I would need another truck.

"Mr. Kelaheer: I beg your pardon. What was your answer?

"The Witness: The way it's been so busy we'll need another truck.

954 "By Mr. Thompson: Question: You couldn't handle that business with one truck, could you?

"Answer: Absolutely not.

"Question: How about with just one station wagon?

"Answer: No, sir.

"Question: You'd be broke, wouldn't you?

"Answer: Yes, sir.")

954 By Mr. Correa:

Q. Now, Mr. Marabella, you spoke of Mr. Iacona, and you said you sold what to Mr. Iacona?

A. Specifically hard parts, Bars Leak, which is a cooling system sealer.

Q. And what else?

A. And occasional fill-ins on various items of the TBA or what have you.

Q. Did you sell him tires?

A. No, sir.

Q. Did you sell him batteries?

A. Occasionally, when he needed a battery.

Q. Referring to the year 1953, did you solicit Mr. Iacona that year?

A. I did myself personally.

Q. You did?

A. Yes, sir.

Q. Did you attempt to sell him tires?

955 A. No, sir.

Q. Do you know what tires he stocked during that year?

A. No, sir; I do not.

Q. You were in his place of business around the time?

A. Yes, sir.

Q. You didn't happen to see his invoices?

A. No, sir.

Q. He kept them in the drawer of his station?

A. I might clarify that, sir. I can just see the top of the name of whose ever invoice it is, I don't make it a practice to go down and check prices or quantities of merchandise.

Q. Whatever your practice in the case of Mr. Iacona you didn't see his invoices?

A. Where he was buying his tires?

Q. Yes, sir.

A. No, sir.

Q. And you don't know?

A. No, sir.

Q. And you didn't try to sell him?

A. No, sir.

Q. You were selling Mansfield tires at the time?

A. Very, very few.

Q. Weren't you able to deliver as many as you could sell?

A. Not in '53; no, sir.

Q. Not in '53. So, you didn't want to sell him 956 tires in 1953?

A. Let's say maybe I didn't want to go round and round with Mr. Iacona in 1953.

Q. Did you take a look around his place to see what kind of tires he was stocking in 1953?

A. Very truthfully, sir, I couldn't tell you what type of tires he was stocking in 1953.

Q. Now, you said you did sell him an occasional battery in 1953, is that right?

A. Yes, sir; when it would be an odd battery that he did not carry in stock.

Q. What kind of batteries did you sell him?

A. Delco. We were a contract jobber at that time before we became a warehouse distributor.

Q. What kind of batteries was Mr. Iacona stocking in 1953?

A. I wouldn't truthfully know. I think that he was carrying some, I believe, Goodyears, sir.

Q. Is he stocking anything other than Goodyear?

A. Not to my knowledge.

Q. Would it help your recollection if I told you that Mr. Iacona testified here the day before yesterday that in the spring of 1953 he started putting in Delco batteries?

A. Well, I don't know who he was buying them from for stock, I can tell you that. I was getting the fill-in business for an odd job if he didn't have one on the shelf.

957 Q. Do you know whether or not he was buying the Delco batteries from Ed Parris?

A. That I couldn't tell you, sir.

Q. Did you make any effort to sell Mr. Iacona Delco batteries on a stocking basis in 1953?

A. I myself did. Yes, sir.

Q. What did he tell you?

A. Sticking with Goodyear. I know that I went in there myself every week up until the time Mr. Iacona left that location and I can truthfully say that he may have had them, if he did have the Delco batteries as you say he didn't have them on display.

Q. Not as I, as he says.

A. As Mr. Iacona says.

Q. I don't know what he said—

Mr. Kelaher: May we have the reference to the testimony?

Mr. Correa: Yes, sir. 659.

Mr. Kelaher: Thank you.

By Mr. Correa:

Q. Now, sir, did you sell Mr. Iacona in 1953 all the Delco batteries he bought on any basis, fill-in, stocking or what ever?

A. Did I?

Mr. Kelaher: Objection, your Honor; he would have
958 no way of knowing.

Mr. Correa: Well, if he knows.

Hearing Examiner Kolp: This is cross examination.

Mr. Kelaher: Certainly.

Mr. Correa: If he knows. That, I may say, is to be understood on all of my questions.

Mr. Kelaher: I think that the qualification should be stated orally in this type of question.

Mr. Correa: I think it should be clear.

The Witness: All I can say is he called us for a battery on a specific job. To my knowledge, as far as I can recollect, Mr. Iacona never bought any Delco batteries from me for stock.

By Mr. Correa;

Q. Did he buy them from any of your competitors?

A. That I couldn't tell you.

Q. Specifically do you know whether or not he bought them from Gaul, Derr, and Shearer?

A. I could not tell you, sir; I don't know.

Mr. Correa: I have no further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: May we have a minute, your Honor?

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: Yes, I just have a few.

Redirect Examination by Mr. Kelaher.

Q. Mr. Marabella, you were asked on cross examination if your gross sales had increased during the period since you began business in 1951?

A. Yes, sir.

Q. Have your sales increased with respect to the sale of TBA items to Atlantic service stations?

A. Specifically, no, sir.

Q. So, the gross sales increase is not due at all to any increase in sales of TBA to Atlantic service stations?

961 A. No, sir; there's other factors involved. There's price increases, naturally, which puts your sales up.

Q. Have you increased your sale of hard parts?

A. Very much so, sir.

Q. And does that account primarily for your increase in gross sales?

A. That is the biggest factor but as I mentioned the price increases is a factor and also buying merchandise on a direct basis; in other words, not paying a premium to another distributor which gives us a greater profit margin.

Q. Such as on Delco batteries?

A. Yes, sir.

Q. You were asked on cross examination to give the names of various competitors. I noted that you did not mention the name of Mr. Parris. I would like to ask you whether Mr. Parris competes with you in your whole trading area?

A. As far as the Atlantic stations go, sir, when we speak of competitors I have about given up as far as the TBA goes on some of these other items and I speak of hard parts competitors.

962 By Mr. Kelaher:

Q. Reference was made in cross examination to a Sharon Hill Garage. Do you know whether or not that is owned by the gentleman with the unpronounceable name, or whether it's a leased station?

A. To my knowledge it's not a lease operation; in fact, I believe it's a Mr. Lewis owns the building.

Q. And as the name would seem to indicate, is that primarily a garage for repair of automobiles?

A. Yes, primarily.

Q. Now, with respect to Mansfield tires, you stated on direct that you at one time—and I understood you to say

that you were handling Mansfield tires to date—but you stated on cross you discontinued them. When you began business did you begin to handle Mansfield tires?

A. Not immediately.

Q. When did you begin handling them?

A. In 1952.

Q. Do you recall what part of '52?

A. I would say the spring of '52.

Q. And you continued to handle them until when?

963 A. Well, up until we sold our inventory out which was just up until the end of this spring.

Q. Until the spring of 1957?

A. Yes.

Q. I see.

Now, on cross examination you stated that you discontinued, did you say buying Mansfield tires in 1955?

A. Yes. That's when the contract terminated, the latter part of '55.

Q. But you had some Mansfield tires in stock that you continued to sell until—

A. Quite a few of them.

Q. And that stock was not depleted until the spring of 1957?

A. Yes, sir.

Q. Now, I would like to ask you about tubes. When did you begin to handle tubes?

A. Well, about the same time that we started handling tires.

Q. And do you still purchase tubes for resale?

A. Yes, sir.

Q. And I think you mentioned the brand name as L & D, is that correct?

A. Yes, but it's made by the Mansfield people.

Mr. Kelaher: No further questions, your Honor.

Mr. Thompson: No question.

Mr. Correa: No further questions.

964 Hearing Examiner Kolb: That's all, Mr. Marabella.
Thank you.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

965 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Lanza.

MICHAEL THOMAS LANZA was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Michael Thomas Lanza. 1500 East Duval Street, Germantown, Pennsylvania..

Q. Mr. Lanza, are you associated with the Lanza Tire Service?

A. I am, sir.

Q. What is your position with them?

A. Partner.

Q. And who are the other partners in the company?

A. My two brothers.

Q. What are their names?

A. Frank and Fred.

Q. How long has your company been in business?

A. Thirteen years.

Q. And where was your company first located?

A. 420 East Mechanic Street, Germantown.

Q. That is in the city of Philadelphia?

966 A. Yes, sir.

Q. How long were you at that location?

A. 12 years.

Q. And after that time, did you move to a new location?

A. 525 Armstrong. That is in Philadelphia.

Q. Are you engaged in the sale and distribution of new tires and tubes?

A. I am, sir.

Q. What tires do you sell?

A. Mainly Goodyears and Firestones. Of course if they want U. S., whatever they want, I try to get them.

Q. Primarily do you sell—

A. Goodyear and Firestone.

Q. Do you sell batteries?

A. Exide batteries.

Q. Are you also engaged in a recapping business?

A. That is my main business, recapping.

Q. Now what is your marketing area? In which area do you sell these products?

A. Northeast, part of Bucks County, part of Montgomery County, and North Philadelphia.

Q. When you say Northeast, are you referring to Northeast Philadelphia?

A. Out towards Bristol.

Q. Do you have delivery trucks?

967 A. Yes, sir.

Q. How many?

A. One delivery truck and we have two trucks on the road.

Q. Two trucks on the road?

A. Yes, sir.

Q. So in all you have three trucks which are used for delivery of merchandise to the customers?

A. Yes, three moving trucks.

Q. And are you, yourself, an outside salesman for the firm?

A. I am.

Q. Do you employ any other outside salesmen?

A. One.

Q. Is the other outside salesman compensated on a salary or a commission, or both?

A. Salary.

Q. Are there any Atlantic service stations in your trading area?

A. I would say anywhere from 45 to 50, possibly 60.

Q. Is your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Yes, sir.

Q. Now in addition to tires and batteries, do you also sell tubes?

A. Yes, sir.

Q. What brand of tubes?

968 A. Goodyear and Firestone.

Q. Do you solicit the business of the Atlantic stations you have mentioned?

A. The ones I come in contact with, yes.

Q. Approximately how often do you solicit such stations?

A. Twice a week.

Q. Are you able to obtain recapping business from such Atlantic stations?

A. Yes, sir.

Q. Are you able to obtain new tire business from such Atlantic stations?

A. Fill-in orders.

Q. Fill-in orders?

A. Yes.

Q. Are you able to obtain stocking business?

A. No, sir.

Q. Are you able to obtain battery business from Atlantic stations?

A. When Atlantic had the Exide batteries, I used to sell a lot of them; but since they took on Goodyear batteries, I sell very few.

Q. And are you able to sell tubes to Atlantic stations?

A. Yes, sir.

Q. You are able to sell some tubes?

A. Yes.

969 Q. Are you—

Mr. Correa: (Interposing.) Just a minute. Let the witness—

Mr. Kelaher: I will withdraw the question. Strike it from the record.

By Mr. Kelaher:

Q. Are new tubes sold on a stocking or fill-in basis?

A. Mostly fill-in basis.

Q. Based on your own knowledge, do you know what line of TBA products is carried by Atlantic service stations?

A. I don't fool with that, sir. I strictly stay with tires and batteries and recapping.

Q. What type or what brand of tires do the Atlantic service stations carry?

A. Goodyears and some Firestone. It all depends. Like in Bucks and Montgomery, most of them handle Firestone.

Q. I beg your pardon?

A. In Bucks County and Montgomery County, a lot of them handle Firestone.

Q. Are you talking about Atlantic service stations?

A. Yes, sir.

Q. You are talking about the stations who own their own—

A. (Interposing.) Atlantic stations.

Q. And what type signs do you find on Atlantic service stations?

970 A. Firestone and Goodyear.

Q. When you speak of Bucks County, what part—is that north of Philadelphia?

A. It would be Northeast.

Q. Northeast. And how far up?

A. Up in Bristol, and back in Feasterville.

Q. How do you spell that?

A. F-e-a-s-t-e-r-v-i-l-l-e.

Q. Now in the Philadelphia area, what brand of TBA is carried by Atlantic stations?

A. As far as tires and batteries, it is Goodyear.

Q. Do you solicit new tire, tube and battery business from these Atlantic stations?

A. Yes, sir.

Q. And you stated that you sell on a fill-in basis only, is that correct?

A. Only, no stock orders.

971 By Mr. Kelaher:

Q. Mr. Lanza, do you know in the Philadelphia area who the Goodyear TBA suppliers are, to Atlantic service stations?

A. Up around the north, it is Fred Glenn, and then down in the northeast, it is George Harvey, or Harvey George, rather.

Mr. Kelaher: No further questions.

972 *Cross-Examination by Mr. Correa.*

Q. Mr. Lanza, you said that recapping or retreading was your main business?

A. Retreading, yes.

Q. That is really retreading, isn't it?

A. That is a better name for it, yes.

Q. That is your main business?

A. Yes, sir.

Q. And you are pretty successful retreaders, as I understand?

A. I do a lot of travelling, let's put it that way.

Q. And you have what, 20-some-odd molds?

A. We don't have them all connected, but we have approximately 22.

Q. That is a pretty big operation?

A. Yes.

Q. And most of the work is done by you, is that correct?

A. And my brothers.

Q. My information is that you personally put in 15, 16 hours a day?

A. A lot of hours.

Q. And you said on direct, I think, that that was your main business?

A. Recapping?

Q. Yes.

973 A. Yes, sir.

Q. Or retreading?

A. Yes, sir.

Q. Would you say it was 80 percent of your business?

A. I would think so.

Q. In addition to that, do you do retail business?

A. Yes, sir. Very very little though as far as door selling, but we do some; to say none at all wouldn't be right.

Q. You have retail customers?

A. Some, yes.

Q. To whom do you sell tires?

A. Mostly mine is wholesale.

Q. I see. And what portion of your business would be retailing?

A. Well, some recaps, some new tires. A very small portion of it.

Q. Ten percent, you would say?

A. About 20 percent, let's put it that way.

Q. The retreading business in recent years has become pretty profitable, hasn't it?

A. Well, I never knew what a tire was until about 13 years ago and since I have been on the road, I have seen my brothers put out some wonderful work, which made me a salesman in order to sell it.

Q. Isn't it true that over recent years in particular retreading has sort of come up?

974 A. In great momentum, yes.

Q. During the war retreading got kind of a bad name, didn't it?

A. That was because of the merchandise.

Q. But in recent years it is quite a profitable business, I believe?

A. Yes, sir.

Q. And that would be true as contrasted with other phases of the tire business, such as even selling new tires, isn't that right?

A. Well, I don't know just how to put it. Naturally with the trend of recapping up, as it is, it would even require that you sell new tires too, because there is that many more cars on the street.

Q. But isn't actually an efficient operation such as you conduct more profitable than new tires?

A. Yes, sir.

Q. Would I be right in inferring that that accounts for the emphasis in your business on the retreading phase of it?

A. That my retreading is better—

Q. Yes.

A. Definitely, more in recapping than in new tires.

Q. You have no particular difficulty getting retreading business from Atlantic dealers, do you?

A. No, sir.

975 Q. You are quite successful in that as a matter of fact?

A. Yes, sir.

Q. Harvey George and Fred Glenn offer retreading services, don't they?

A. Yes, sir.

Q. And you have been able to outsell them to quite a few Atlantic dealers?

A. Here recently it has been getting a little bit off since you boys put up a new plant.

Q. Well, you can't blame us for trying to get your business, really.

Richard Kaiser of Abbington, Pennsylvania, is he an Atlantic dealer?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Yes, sir. He says I do anyway.

Q. Well, we will have to take his word for that, I guess.

A. Well, a lot of these guys tell you things and you take it for granted.

Q. How about Fred Phillips of Philadelphia? Is he an Atlantic dealer?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Yes, sir.

Q. And how about Charles Shock?

A. Yes, sir.

976 Q. Also of Philadelphia. Is he an Atlantic dealer?

A. Yes, in Roxborough.

Q. And you have a hundred percent of his business?

A. Yes, sir.

Q. James Amos, also Philadelphia. Is he an Atlantic dealer?

A. Yes, sir, Germantown.

Q. You have a hundred percent of his retreading business?

A. As far as I know.

Q. That is what he tells you anyway, isn't it?

A. (Nodding affirmatively.)

Q. William Barton, also Philadelphia?

A. Yes, sir.

Q. He is an Atlantic dealer, is he not?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Not here recently.

Q. Not recently?

A. No.

Q. Well, have you still substantial business of William Barton on retreading?

A. Well, I would say yes.

Q. How about George Kee? Is he an Atlantic dealer?

A. Very good recapping customer.

Q. A hundred percent of his business?

A. Yes, sir.

977 Q. How about J. Ferrari? I don't have his first name.

A. No, sir.

Q. You don't have his business?

A. No, sir.

Mr. Kelaher: What is his name?

Mr. Correa: Ferrari. I don't know what the "J" stands for.

The Witness: Joseph.

By Mr. Correa:

Q. How about D. Pinelli? I don't know what the "D" stands for.

A. Pinelli's, in North Hills?

Q. Fairless Hills, I have here.

A. Oh, Danny, yes. Of course. He is in North Hills. Not North Hills, he is in Fairless Hills. He is over in General—

Q. Fairless Hills, right. You say he is over in General—

A. (Interposing.) He has been my customer for almost a year now.

Q. When you say he is over to General, are you referring to some competitor or—

A. (Interposing.) Yes. A stipulated guarantee.

Q. What competitor is that, sir? Is that General tire and Rubber Company?

A. Yes, sir.

Q. He has become a customer of theirs for retreading, is that it?

978 A. Yes, sir.

Q. And they have a guarantee on them?

A. With every tire, that is right, which I don't get.

Q. I see. And how about Mr. Kepp of Eddington, Pennsylvania?

A. I used to have him as a customer.

Q. But not any more?

A. No, sir.

Q. Who has him now?

A. I don't know, sir.

Q. I take it you have other Atlantic dealers, other than the ones I mentioned, who have been good customers of yours for retreading?

A. Yes, sir.

Q. Do you have other Atlantic dealers other than the

ones I have mentioned, who give you all of their retreading business?

A. Yes, sir.

Q. I wish you all the continued success in your business.

Mr. Correa: That is all.

By Mr. Thompson:

Q. Mr. Lanza: I represent the Atlantic Refining Company. Who is your principal competitor? Does Harris & Leonard operate in your territory?

A. I don't know of him, sir.

Q. There are other people who handle retreading 979 and recapping business that try to sell accounts in your territory, aren't there?

A. Yes, sir.

Q. Who are your principal competitors?

A. Such as McCleary, Clock, and well, Goodyear too, Firestone as far as that goes. And then there is a lot of jobbers such as National Tire, J. P. Burke, and then there is Foster, Miller and Bierly, they are sending men out, and then you see a lot of jobbers going out on the street, too.

Mr. Thompson: That is all. Thank you very much.

Redirect Examination by Mr. Kelaher.

Q. Mr. Lanza, on cross-examination you gave some approximate percentages of your sales volume. You stated that approximately 80 percent of your volume was due to retreading?

A. Yes.

Q. And you gave a 20 percent figure. Would you state what that was?

A. Well, as far as new tires, I said the 20 percent figure, as far as selling, like people coming to the door, but of

course, including the 20 percent as far as new tires and tubes and batteries, and who comes to the door.

Q. What part of that 20 percent would be wholesale, approximately?

(After pause.)

980. Q. On cross-examination I understood you to say that you sold very little in retail, is that correct?

A. Retail, yes.

Q. So the bulk of this 20 percent is wholesale?

A. Yes, as far as new tires and batteries.

Q. Now approximately what inventory stock, what is the value of inventory stock of new tires you keep on hand?

A. Well, I have run my inventory down because of the situation.

Q. What situation?

A. Right now it is out on the street.

Q. What do you mean? Will you explain that?

A. Well, the cheap tires now that is going out that makes it very difficult for recapping, and I have run my new tire sale down.

Q. If you know, what is your approximate inventory evaluation now?

A. I am just trying to figure. We did have a figure of \$6,000 but we ran that down and I would say about \$2,000.

Q. Does that include Goodyear?

A. I am including some of my camel back and all.

Q. Does that include Goodyear?

Mr. Thompson: Is that dollars or tires?

The Witness: Dollars, because I had run it way down. So I will be getting ready for my snow tires now.

By Mr. Kelaher:

981. Q. Does Mr. Glenn, the Goodyear TBA supplier you referred to, have recapping facilities on his premises?

A. No, sir. Not to my knowledge and I have known him for some time.

Q. Does Mr. George, the Goodyear TBA supplier you also mentioned, have recapping facilities?

A. I don't know, sir.

Q. Now you stated, in answer to a question on cross-examination, that—you made reference to "you boys" opening up a new recapping plant. What did you mean?

A. Goodyear down on Thompson Street, isn't it?

Q. This is Goodyear?

A. Yes.

Q. When did they open up that new plant?

A. I couldn't say the date.

Q. Was it in 1957 or 1956?

A. Before that. I couldn't tell you exactly. Goodyear could tell you.

Q. Has it been fairly recent?

Mr. Kelaher: Mr. Examiner, if there are any Goodyear gentlemen present, maybe they would supply us with the approximate date they opened up this Goodyear plant.

Mr. Correa: I am told that the plant has been here since 1952, but it has recently moved its location.

The Witness: That is right. There was one on Rid-982 ley Avenue. Is that still in operation?

983 Mr. Kelaher: Just a minute, your Honor, I am going—

Hearing Examiner Kolb: (Interposing.) I am not going to wait around all night for you to do it.

By Mr. Kelaher:

Q. Now you stated on cross-examination that at one 984 time you had the business of Atlantic dealer William Barton—

Mr. Correa: (Interposing.) I submit, if your Honor please, now counsel has left it and therefore—

Mr. Kelaheer: I think that is grossly unfair. I am just looking at my notes here. I haven't left it at all. I am just beginning to develop it.

Mr. Correa: The witness said certain unidentified people made certain statements. I move to strike that testimony unless the people are identified.

Hearing Examiner Kolb: That has been stricken.

Mr. Correa: Then I am in error. Thank you.

Mr. Kelaheer: At this time I would like to have the record read back, the names that were given to us, that were referred to by Mr. Correa.

Mr. Correa: I would be glad to give Mr. Kelaheer my notes in the interest of expediting the proceeding. (Handing.)

By Mr. Kelaheer:

Q. With reference to J. Ferrari, in Bethayres, Pennsylvania, Mr. Ferrari is an Atlantic station.

Mr. Kelaheer: For the record, all of these names I am about to refer to are Atlantic service stations.

Mr. Thompson: You mean they are, or are you asking him whether they are?

Mr. Correa: He has testified they are.

Mr. Kelaheer: Yes.

985 By Mr. Kelaheer:

Q. Have you done any recapping business for Mr. Ferrari?

A. To be specific, three tires and that has been about four years ago.

Q. When you say three tires are you referring to three recaps?

A. That is right.

Q. So he has not been a regular customer of yours?

A. No, sir.

Q. You referred to a Mr. Kepp?

A. Yes.

Q. Was he at one time a regular customer of yours, on recapping?

A. Yes, sir.

Q. And when did he discontinue being a regular customer, approximately?

A. Approximately three years ago.

Q. With reference to Mr. Richard Kaiser, Abington, Pennsylvania, is he a regular customer of yours?

A. In recapping, yes.

Q. Recapping, that is.

A. Yes.

Q. And has he ever made any statement to you recently concerning recapping business?

A. As far as recapping?

986 Q. Yes.

A. No, sir.

Q. I refer you to Fred Philips, in Philadelphia. Is he a regular customer of yours?

A. In recapping.

Q. And has there been any decrease in the recapping business with that account?

A. The only decrease I see is like I said before, when the cheap new tires came out.

Q. I am talking about—I would like you to confine your answers to this statement you made with reference to the Goodyear plant.

Mr. Correa: I submit, your Honor, that is most unfair. The witness' answer was completely responsive and counsel doesn't apparently like it, but that is no basis for suggesting that it was unresponsive.

By Mr. Kelaher:

Q. I would like to ask you about William Barton, of Philadelphia. You stated that he was a regular customer

of yours, but not recently, I think was the way you put it. Is that correct?

A. As far as new tires are concerned.

Q. I am talking about recapping.

A. Well, like I say, since this cheap tire came out, my recapping has fell off.

987 Q. Did Mr. Barton ever make any statements to you with respect to shifting the recapping business?

A. Well, he has mentioned the fact that they might have to like give some recapping to Goodyear.

Q. And he was one of the dealers you have referred to as having made that remark?

A. Yes, sir.

Q. And your recapping business has decreased with Mr. Barton, isn't that correct?

A. No, the man was honest enough, he showed me a couple of tires he bought from Glenn, he said he bought a couple of tires off Glenn.

Q. Talking about recaps?

A. Yes, sir.

Mr. Kelaher: No further questions.

Recross Examination by Mr. Correa.

Q. Mr. Lanza, just one question. Fred Glenn has been offering recapping or retreading to Atlantic service stations, dealers, since at least 1952, isn't that correct?

A. Well, I guess he has.

Q. Don't you know that, sir, if you think back, cast your recollection back?

A. He has—let me put it this way: He has solicited recapping business.

988 Q. Since 1952 at least?

A. Well, what year I couldn't tell you.

Q. Well, as far back as you can remember, is that correct?

A. Even when I was on—there at McCollum and Elliott Street.

Q. So it would be pretty fair to say as far back as your business was, you can remember?

A. If you want to put it—I wouldn't say specifically just when.

Mr. Correa: I see. Nothing further.

Mr. Thompson: No further questions.

Hearing Examiner Kolb: Anything further?

Mr. Kelaher: No, your Honor.

Hearing Examiner Kolb: That is all, Mr. Lanza.

(Witness excused.)

Mr. Kelaher: I would like to call Mr. Hayes, please.

SHERMAN HAYES was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Sherman Hayes, 9814 Woodfern Road, Philadelphia 15, Pennsylvania.

Mr. Hayes, at one time were you an employee of 989 Tri-State Distributors, Inc., 7th and Lehigh Streets, Philadelphia?

A. 17th and Lehigh, that is right.

Q. During what period were you an employee there?

A. From 1946 until 1955.

Q. And during part of that period were you an outside salesman for the firm?

A. That is correct.

Q. And what period was that?

A. From 1954—the end of '53 until 1955.

Q. Did Tri-State Distributors at that time sell TBA products?

A. Yes, they did.

Q. What products did they sell?

A. DuPont chemicals, Gates fan belts, Purolator oil filters, Champion spark plugs, Simoniz, Goodyear tires, and Armstrong tires.

Q. Batteries?

A. Exide and Gould National batteries.

Q. When you became an outside salesman, what was your sales territory?

A. Parts of eastern Montgomery and Bucks County.

Q. Do you recall whether there were Atlantic service stations in your trading area?

A. Yes, there were.

Q. Do you know approximately how many?

A. I would say well over 50. I never actually counted them.

990 Q. And did you at one time call on a Russell Tompkins, an Atlantic dealer located at Butler and Lindewold, Ambler, Pennsylvania?

A. That is correct.

Q. And did you solicit TBA business from Mr. Tompkins?

A. Yes, I did.

Q. And were you able to sell him any TBA?

A. I—

Mr. Correa: Has the date been fixed for this, may I inquire?

The Witness: 1954. I sold Russell Tompkins Exide batteries and DuPont Zerone and Zerex.

By Mr. Kelaher:

Q. And had Mr. Tompkins been buying any of those products prior to the time you became a salesman?

A. Yes, he had.

Q. And had he been buying Exide batteries prior to the time you took over the territory from your company?

A. Yes, he had.

Q. And did he continue to purchase Exide batteries from you?

A. No, he hadn't.

Q. If he gave you a reason, I would like you to state the reason, the approximate time, when it was given, and the location of the place where the conversation took place?

A. Well, it was in the Atlantic station at Butler Pike and Lindenwold Avenue in Ambler and the time was, 991 as close as I recall, late summer or early fall of 1954.

At the time I made the call at the station, I talked to Russ and his battery stock at that time was very depleted, due to the hot weather and the sale of batteries at that particular time. And I talked to Russ about filling his battery merchandise with the batteries that he was turning over and the ones he would need. And he said, "I am sorry, but I can't buy Exide batteries." He said "I have had to place my order with the Goodyear TBA distributor for Goodyear batteries."

Q. Do you recall who was the Goodyear TBA distributor?

A. I believe it was Fred Glenn.

Q. And from that time on, were you unsuccessful in selling Exide batteries to him?

A. After that time I sold very few batteries to Russ Tompkins. It was a case of the consumer wanting an Exide battery and not a Goodyear battery.

Q. Then he might call on you for a battery?

A. That is right.

Q. Mr. Hayes, prior to the time you became an outside salesman for Tri-State Distributors, did you work in the—

A. I worked in the office and warehouse.

Q. In the warehouse?

A. That's right.

Q. And were you familiar with the inventory stock?

A. Yes, I was.

992 Q. And were you familiar with the records with respect to Exide batteries stock?

A. Well, I was in charge of the billing and so I did know where merchandise went.

By Mr. Kelaher:

Q. You stated, Mr. Hayes that you were with Tri-State Distributors a period of about 9 years. That would begin about 1946?

A. That is correct.

Q. Do you know, based on your own knowledge, what brand of batteries Atlantic stations were carrying at that time?

Mr. Correa: What time?

Mr. Kelaher: The beginning of 1946.

The Witness: Based on my own knowledge, I would say it would either be Lee or Exide, probably Exide mostly.

993 By Mr. Kelaher:

Q. Do you recall whether Atlantic stations began to carry other than Exide batteries at a later date?

A. At a later date?

Q. Yes.

A. Yes.

Q. What brand did they begin to carry?

A. Goodyear.

Mr. Kelaher: No further questions.

994 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

Q. Now, sir, you were an outside salesman for about a year, is that right?

A. Almost two years.

Q. Almost two?

A. That is right.

Q. And you told us of a conversation you had with Mr. Russell Tompkins.

A. That is correct.

Q. And Mr. Tompkins did change over from Exide batteries to Goodyear batteries at or about that time?

A. That is right.

Q. And isn't the fact, sir, that the reason Mr. Tompkins changed over was because Goodyear has just come out with a dry charge battery?

A. That is correct.

Q. And he told you that, didn't he?

A. That is right.

Q. Now, sir, where are you presently employed?

A. Lanza's Tire Service.

Q. That is the Mr. Lanza who preceded you on the witness stand?

A. That is correct.

995 Q. Now, sir, you know who Fred Glenn is?

A. Yes, sir.

Q. Now are you familiar with the fact that Fred Glenn had a service station at one time?

A. I believe I know that he had a service station.

Q. Do you know that he gave it up and sold out to an employee of his?

A. I wasn't aware of that fact, no.

Q. Do you know that thereafter Mr. Lanza took over the recapping business of that station?

A. No, I didn't.

Q. You didn't know that?

A. No, I don't.

Mr. Correa: I have no further questions.

Hearing Examiner Kolb: Atlantic have any questions?

Mr. Ballard: No, sir.

Hearing Examiner Kolb: Any redirect?

Redirect Examination by Mr. Kelaheer.

Q. Mr. Hayes, how frequently did you service Mr. Tompkins on Exide batteries?

A. I made it a practice of calling on the stations at least once a week.

Q. Did you replace old batteries or deteriorated batteries and so on, to keep them in fresh stock?

996 A. We rotated stock that was slow-moving and didn't turnover, yes.

Mr. Kelaheer: No further questions.

Mr. Correa: Nothing further.

Hearing Examiner Kolb: You are excused, thank you.

(Witness excused.)

Mr. Dias: Mr Colby, please.

WILLIAM COLBY was called as a witness on behalf of the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your full name and business address?

A. William Colby, Harris and Leonard, 1301 West 9th Street, Chester, Pennsylvania.

Q. How long have you been employed by them?

A. Three years.

Q. In what capacity?

A. Salesman.

Q. For the entire three years?

A. Yes.

Q. And what is your sales territory?

A. Well, Hollyoak, Delaware, to West Philadelphia,
997 and Yeadon Chester Pike to Industrial Highway.

Q. What type accounts do you solicit?

A. Service stations, garages, new car dealers.

Q. Among the service stations are there any Atlantic stations in your territory?

A. Atlantic stations?

Q. Yes.

A. Yes.

Q. And can you tell us about how many there are?

A. Thirty or 35.

Q. And do you solicit any of those stations?

A. Twenty-three or so, 23 to 30.

Q. And how often do you call on them?

A. Two times a week.

Q. There are others in the territory then that you do not call on, is that correct?

A. Yes, there is a few I don't call on.

Q. Why is that?

A. Well, we never had too much success in calling on them and the territory is too big to fool with them.

Q. Have you called on them in the past, those remainders, above those that you call on regularly now?

(After pause.)

Q. You call on 23 now regularly?

A. That's right.

998 Q. The other 7, did you call on them regularly at one time?

A. When I first started I was calling on them pretty regularly.

Q. Of these 23 that you call on, do you sell them new tires?

A. Only on a fill-in basis, or what I mean by that is that if they need a tire for a specific job or something like that, I sell to them.

Q. And do you sell them batteries?

A. Very seldom.

Q. You attempt to sell them new tires and batteries, do you?

A. I have attempted to sell them new tires and batteries, yes.

Q. What are those stations advertising on or about their property in the line of TBA?

A. In my territory, well, in the Delaware territory it is Firestone, but in the Delaware County, it is Goodyear.

Q. Now, can you name some of your accounts for us, please, and tell us what you sell to them?

A. Well, there is Samuel Watson, Boothwyn, Pennsylvania; I sell him new tires. He owns his own station though, he does not lease it from the Atlantic Company.

Q. Does he buy on a stocking basis?

A. Yes, he does.

Q. How about recaps, do you have recap business with him?

A. Yes, he does.

Q. Can you name some others?

999 A. With recapping as the main thing, there is Gene DeFelice, of Ridley Park.

Q. Do you sell him any new tires?

A. I have sold him new tires, very seldom though. I mean, as I say, on a fill-in basis.

Q. Now each of these stations that you named, are these the stations that you call on twice a week?

A. Yes.

Q. Will you name another customer of yours, Atlantic station?

A. Earl Connors, of Chester.

Q. And what do you sell to Mr. Conners?

A. Well, I have sold him a few batteries, fill-in, where he needed them for a specific job; recapping; that is about it.

Q. Do you do recapping business with him regularly?

A. I do, yes. He doesn't do too much of it, but I think I do most of it.

Q. Have you tried to sell him new tires?

A. I try to sell them all new tires, but I mean I don't have too much luck with him.

Q. Can you name another account, Atlantic account?

A. Don Elko. That is in Sharon Hill. I do recapping with him.

Q. And how about batteries with Elko? Do you do any battery business with him?

A. No.

1000 Q. No new tires either?

A. No new tires or batteries.

Q. How long have you been doing recapping business with each of these that you have named so far?

A. Well, the first one, Watson, I have been doing that with him ever since I have been with the firm.

Conners, about a year and a half.

Elko, he has only been in business I would say about six to eight months, or maybe a little longer.

And DeFelice, for three years.

Q. Do you know who the Goodyear supplier is in that area?

A. Yes, Ed Parris; Edward Parris.

Q. And I believe you said you had an account or two in Delaware.

A. Yes.

Q. Do you know who the Firestone supplier is?

A. Firestone Store of Wilmington.

Q. Does the Firestone Store do any recapping?

A. Yes, they do.

Q. How about Parris, does Parris do any recapping?

A. Mr. Parris, he doesn't do his own recapping to my knowledge. I mean, he gets recapping for dealers, but he doesn't do it himself I don't think.

Q. Can you name another customer?

A. Wait a minute. Larry Conneen.

1001 Q. Spell that.

A. Conneen.

Q. Where is he located?

A. Crum Lynne.

Q. Is that in Pennsylvania?

A. Yes, Crum Lynne, Pennsylvania.

Q. What type business do you do with him?

A. Recapping mainly.

Q. Can you name another customer?

A. John Stockett, of Glenolden.

Q. What type business did you do with him?

A. Recapping, and I have sold him occasionally a new tire.

Q. On Conneen, can you tell us how long you have been selling to him.

A. Roughly two years.

Q. And Stockett?

A. About the same time, about two years.

Q. Can you name another account?

A. Clarence Nelson's Atlantic in Darby.

Q. And the type of business with that station?

A. That is again as a recapping business.

Q. Any more?

A. Frank Buckingham's Atlantic, of Chester.

Q. What type of business is that?

A. Recapping.

1002 Q. Any more? Can you name another one?

A. Frank Lancaster's Atlantic of Chester.

Q. Is that recapping?

A. That is recapping and used tires.

Q. Used tires?

A. Yes. And occasionally I have sold Frank a new tire.

Q. Do you sell him any on a stocking basis?

A. No, none of these are on a stocking basis.

Q. Can you name another account?

A. A station under the name of Harry and Jim's Atlantic, of Boothwyn.

Q. And what is it you sell to them?

A. Recapping.

Q. Have you ever sold him any batteries?

A. No.

Q. All right. Can you name another one?

A. Ed Stowe, Atlantic. About two years ago I have sold him a couple new ones, and I have sold him recapping, but it is not too big an account.

Q. Can you name another one?

A. John Rehill, of Chester. That is about the majority of them, the main accounts.

Q. I did forget to ask you about Nelson, how long have you been selling to him.

A. Three years.

1003 Q. Buckingham?

A. Three years.

Q. Frank's?

A. Lancaster?

Q. Yes.

A. About a year.

Q. Harry and Jim's?

A. About eight months.

Q. Ed Stowe?

A. Three years.

Q. And John Rehill?

A. Off and on about three years.

Q. Has your business remained about the same with them through the years?

A. In regards to recapping, yes, up until these Atlantic companies have come out with a third line Goodyear tire, which has definitely hurt the recapping sales.

Q. And when was that, approximately, do you recall?

A. I would say that happened around six to eight months ago.

Q. By the way, you handle U. S. Royal's, isn't that correct?

A. That is correct.

Q. Do you have a U.S. Royal tire that is in the same price category as this cheap Goodyear you mentioned?

A. Well, we do, but I mean it would not pay us 1004 to sell it, there would be no profit in it.

Q. You have it though?

A. Yes, we could sell it to meet that price, but I mean I would be making roughly 40 cents, and there is not too much sense in doing it.

Mr. Dias: That is all, your Honor.

Cross-Examination by Mr. Thompson.

Q. Mr. Colby, I represent the Atlantic Refining Company and this gentleman across the way, Goodyear.

A. Yes, sir.

Q. Are you the only Harris and Leonard salesman in the territory that you have described?

A. Well, in my territory, yes. We have another salesman that does the same job I do, and he takes from McDade to Westchester Pike.

Q. That is Mr. Kevis?

A. That is Mr. Drennen. Mr. Kevis is the commercial salesman.

Q. Your principal competitor is C. A. Powers, is it not?

A. Yes, I would say he is the principal one.

Q. Is it not a fact that Parris and Leonard and C. A. Powers virtually divide the recapping business down in the Chester-Delaware County area?

A. Yes, I imagine it is about 60-40.

1005 Q. Did you get the 60—

A. I would say so.

Q. And that is most of the recapping business down in that area, isn't it, the two of you together?

A. Well, now, Superior Tire, they are in there a little bit, but the two principal ones are Harris and Powers.

Q. But you get much more of the business than C. A. Powers, don't you?

A. I would say so.

Q. Isn't it also true you sell virtually all the Atlantic accounts in your area?

A. Yes, I sell all the recapping.

Q. And recapping, of course, is the Harris and Leonard specialty?

A. That is our main business.

Mr. Thompson: I have no further questions.

Mr. Correa: I have no questions.

Redirect Examination by Mr. Dias.

Q. Just one question because the aconstics are bad.

Did you say you d all the Atlantic stations all their recapping, or you sell all of them some recapping? Which is it?

A. Well, I mean it is hard to say what you sell a man. You don't know, but I would say 85 percent of the 1006 recapping is divided between Powers and Harris and Leonard, and I think I get the biggest amount of it.

Q. You do recapping then for all Atlantic stations, is that correct?

A. The ones I mentioned, yes.

Q. But you do not have it all in each of those stations?

A. No, that is pretty tough, to get it all.

Q. Are there other U. S. Royal distributors in your area, Mr. Colby?

A. No, not in that particular area there. The closest one I think would be Burke, I guess, in Philadelphia. He has come down in that area, but he is not too popular down there.

Q. Am I right in saying that Harris and Leonard is the sole U. S. Royal distributor in that area?

A. Yes.

Mr. Dias: That is all, your Honor.

Mr. Correa: No further questions.

Mr. Thompson: No further questions.

Hearing Examiner Kolb: That is all, Mr. Colby.

(Witness excused.)

Hearing Examiner Kolb: Any further witnesses this morning?

Mr. Kelaher: No further witnesses. I move we adjourn until 2:00 p.m.

Hearing Examiner Kolb: We will adjourn until 1007 2:00 o'clock.

(Thereupon, at 12:25 p.m., the hearing was adjourned, to reconvene at 2:00 o'clock p.m. this day.)

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Afternoon Session.

(2:10 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: Mr. Ferguson, please.

RICHARD FERGUSON was called as a witness for the Commission and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address, please?

A. Richard Ferguson, 8 East Ninth Street, Auto Parts and Radiator, Chester, Pa.

Q. How long employed?

A. Four years.

Q. And in what capacity?

A. Salesman.

Q. Have you been a salesman for the entire four years?

A. Well, yes, four years and about four months; four months inside and four years on the road.

Q. And what is your sales territory?

A. Delaware County, part of Philadelphia.

Q. Is any of your territory in the State of Delaware?

A. None at all.

Q. What type business do you solicit, Mr. Ferguson?

1009 A. Auto repairing, chemical business, anything that has to do with automobile repair, gasoline engines and diesels.

Q. I mean, rather, the type of outlets or retail outlets that you call on. Do you call on service stations?

A. Service stations.

Q. Garages?

A. Garages; fleets; car dealers.

Q. You mentioned handling chemicals. What chemicals does your company handle, Mr. Ferguson?

A. Well, we handle Prestone chemicals, cooling system chemicals; waxes, Prestone waxes; polishes and car wash, Johnson's wax; Rust Master chemical products; Carb Master; almost any chemical they'd use in a service station or a garage.

Q. I am more interested now in knowing what all is in the Prestone chemical line. Is that more than just anti-freeze?

A. Oh, yes.

Q. Will you name the various items that are in the Prestone chemical line?

A. Well, there is Prestone anti-rust; Prestone 10-minute Flush; Prestone sealer, and Prestone prime, but it is just called prime, that is a gas line anti-freeze.

Q. Waxes and polishes, are they considered chemicals and in the Prestone line?

A. Yes. Prestone wax and there is a Prestone 1010 polish and Prestone car wash.

Q. In your sales territory, are there any Atlantic stations?

A. Oh, yes.

Q. And do you call on them?

A. Yes, I do. There are some I call on and some I do not call on.

Q. Well, how many are in your territory at all, can you tell us that?

A. Can I look at my notes here of my own?

Q. Yes.

A. There is about 15 of them in my territory, about 11 I call on, and the 11 I call on is only a few I call on steady; what I call steady is every week or every two weeks.

Q. How many do you call on steady?

A. Well, about seven of them steady.

Q. And the others that are in your territory, do you call on them periodically?

A. Once a month; once every two months.

Q. Have you ever called on them more often?

A. No, because I have a hard time selling them—I can only sell them hard parts.

Q. Of these stations that you do call on regularly, can you name them and tell us what it is that you sell to them?

A. Well, do you want me to give you the name of the station and tell you just what I sell to them?

1011 Q. If you can.

A. I can tell you if you want independents; I have a few independents included in that seven.

Q. What do you mean by independents?

A. Well, they own their own station; they are not lessees.

Q. Yes, include those.

A. Include those.

Well, I have first on the list here is Sandy's Cities Service; that is in Darby. If you would like to know the—

Q. Sandy's Cities Service?

A. Sandy's Service Stations; that is Atlantic, I am sorry, in Darby, and the only thing I can sell him is ignition and brake lining and mufflers. That is all. He does stock my ignition.

Q. Sir?

A. He does stock my ignition.

Q. Is he an independent?

A. No. He is a lessee.

Q. All right.

A. I have John Stockett's Atlantic, in Glenolden. That is just ignition.

Now, Henry's Atlantic, Chester Pike in Norwood. That is an independent Atlantic station.

Mr. Ballard: I beg your pardon, I didn't get the name.

The Witness: Henry's Atlantic, at Chester Pike 1012 and McKinley Avenue, in Norwood. He is an independent Atlantic station, and I call on him regularly every week. He is a very good account. He buys practically all his chemicals from me plus all hard parts.

By Mr. Dias:

Q. All right, sir.

A. Minka Brothers, Atlantic, 6th and Morton, in Chester. They are an independent Atlantic station and a very good account of mine, and I sell them chemicals and hard parts. Between Chester Auto Parts and Auto Parts and Radiator we sell them all the chemicals.

Q. And did you say he was an independent?

A. Independent.

Q. M-i-n-k-a?

A. That's right. M-i-n-k-a, 6th and Morton.

Triangle, Atlantic, at Island and Suffolk Avenue, in Philadelphia, he is another independent Atlantic station, and I sell him Gates belts, hoses, a portion of his chemicals.

Q. Now these three stations that buy chemicals, which of your chemicals do they buy? Do they buy your Johnson's or your Prestone?

A. Henry's Atlantic buys Prestone chemicals; he is a very big—he sells a lot of waxes and he does sell Prestone wax.

Q. How about Minka?

A. Minka, they have Prestone and DuPont anti-1013 rust chemicals. They do have some DuPont.

Q. And Triangle?

A. Triangle, I sell them Rust Master chemicals and Prestone chemicals.

Q. All right, sir.

Now, there is another station or two. That is five so far.

A. I have another one I call on quite regularly, Bakers Atlantic, Chester Pike and Eddystone. He is a lessee, and that is hard parts and equipment business. No chemical business at all.

And the rest I have down here I can tell you the number of calls and how much business it is, how much business I have got out of them and it doesn't pay and if you want me to tell you, I can tell you that.

Q. Yes, I'd like to have that.

A. These are lessees. Branca's Atlantic in Yeadon. That is at Church Lane and Bailey Road in Yeadon; there is another operator in, Frank has only been there about a year, and in 1956 I called on him 20 times and done \$50.15 worth of business.

Q. How many times?

A. Twenty calls. That was all hard parts such as alemite hoses or something he needed for his grease equipment or muffler or tail pipe.

Q. What was your volume with him again? How many dollars worth of business?

A. \$50.15.

Q. Thank you.

A. DeFelice, Atlantic, at Chester Pike and Hinkson Boulevard, Ridley Park; in 1955 I called on him 14 times and sold him \$171.19, my write-up business. That is no call-in business that is repairs on jacks and such as that. No chemicals and very few hard parts there. 1956, 11 times and \$77.80.

I have Green's Atlantic at 204 East Fifth Street; 1956 I called on him 14 times and \$16.34 worth of business.

Then Larry's Atlantic, Chester Pike and Fair Glenn Road in Crum Lynne; 1955 called 11 times and received

\$51.17 worth of business. Stopped calling on him only periodically; once every two or three months.

Q. What type of products?

A. Just Blue Streak ignitions and maybe a muffler or tail pipe.

Q. Of all of those stations that you named, Sandy's, John's, Stocketts, Henry's and so on, with the exception of Henry's, Minka and Triangle, do those stations carry TBA? Do they carry tires in those stations?

A. The independents or the lessees?

Q. All but the independents. What do the lessees carry?

A. The lessees, they carry Goodyear.

Q. Tires?

1015 A. Tires, batteries, accessories.

Q. And they advertise them about the station, do they?

A. Oh, yes.

Q. What about the three independtnts, do they all carry Goodyear TBA?

A. No, they don't.

Q. What does Henry's carry?

A. Henry handles Lee tires, Bowers batteries, they do handle Goodyear fan belts and Gates hoses.

Q. And how about Minka?

A. Minka, they also handle Lee tires; Lee batteries; they do have some Goodyear batteries in there, too; Gates fan belts and Gates hoses.

Q. And Triangle?

A. Triangle, he doesn't stock tires. He buys them as he needs them and he will sell any kind that the customer wants. He is mostly in the repair business; batteries, he stocks some Delco and Gates fan belts and hoses.

Q. Since you have been on your territory have any new Atlantic stations opened in that territory?

A. Oh, yes.

Q. Have you called on them as soon as they have opened?

A. Well, I find it a losing proposition to call on Atlantic stations to try to get the equipment, because that is included right in the building.

1016 Q. Well, how about TBA products?

A. Well, there—that is all set up before I go there. I haven't even got a chance there:

Q. How about new operators of old stations where a station changes hands, have you ever called on them soon after they opened?

A. Yes, I have.

Q. Have you been able to sell any TBA in those stations?

A. None at all.

Q. Those new stations and where the stations have changed hands, what TBA do they carry?

A. Where they have changed hands?

Q. Yes. Where they've changed hands or in those instances where a new Atlantic station opens up, what TBA have you noticed in the stations?

A. Oh, Goodyear.

Q. Do you know who the Goodyear distributor is in your territory?

A. Ed Parris is a Goodyear distributor in my territory.

Q. How do your batteries, accessories, compare price and quality-wise with those of Parris?

A. Price is comparable, and quality, well, of course, I sell the Gates line, Delco batteries, I think I have a much better product to offer, a much better service to offer them.

Q. What type service do you offer?

1017 A. Well, if they were to need a battery, say in the morning, I could have it there in 20 minutes to a half hour or an hour at the most.

Q. And what is your brand battery?

A. Delco.

Mr. Dias: That is all, your Honor.

1018 Hearing Examiner Kolb: Any cross examination?

Cross-Examination by Mr. Ballard.

Q. Mr. Ferguson, how many accounts do you have all told?

A. It changes one month I might have 190, I take off and put on—I could be safe in saying 200.

Q. And do you call on the majority of them 15, 20 times a year?

A. No, I don't call on the majority of them. Some of them I call on once a week; my better accounts I call on once a week. There are a few I have to call on twice a week, some I call on every two weeks, every three weeks, once a month, and maybe once a year, just to get maybe an antifreeze order. And a lot of them I make phone calls to that I don't have to call on.

Q. You, of course, don't make a sale on every call, do you?

A. No.

Q. No salesman would do that, would he?

A. It's impossible to do that.

Q. When you mention a call, how long does a call take generally?

A. It depends, sometimes a call will take a half a day, sometimes it will—a normal call takes 20 minutes to half an hour.

Q. Sometimes you just stop in and pass the
1019 time of day with the fellow?

A. If he's busy I stop in and say hello and good-bye.

Q. A lot of other fellows call on your customers, too, don't they?

A. Oh, yes. There are quite a few salesmen.

Q. For instance, is that Henry's Atlantic Service that you told us about on Chester Road and McKinley Avenue?

A. A very good account.

Q. I think you said you sold him most of his accessories?

A. Well, I would say so. Yes, and all of his equipment.

Q. He does buy, however, from other suppliers, doesn't he?

A. I would say he does buy a little from Ed Parris, but he does do business with two other supply houses, three other supply houses that I know of besides myself.

Q. Which would they be?

A. Motor parts Service in Prospect Park, VJ Auto Parts in Sharon Hill and Philadelphia Wholesale, Philadelphia.

Q. Of Course, they sell him DuPont radiator chemicals, don't they?

Take Philadelphia Wholesale Distributors, they sell DuPont Radiator chemicals to him?

A. I don't know what they sell, but I last sold him Prestone chemicals and Rust Master.

Q. But you don't know whether they sell him radiator chemicals, or not, do you?

1020 A. Well, I would say not because I don't recall seeing it on the shelf.

Q. How about Turtle wax?

A. Turtle wax, he buys that from Philadelphia Wholesale, I know that.

Q. Now, he gets his Wings oil from Delaware County Motor—

A. They are the only distributor of Wings Oil I know of.

Q. Does he have that on his shelf?

A. I couldn't say that for sure.

Q. Now, this Triangle Station that you mentioned is really a garage, isn't it?

A. That's right; it's an inspection station and repair shop.

Q. It has a pump or two outside?

A. It has three pumps.

Q. Three pumps. Does it have an island where you can drive in?

A. He has a big island, he does a big gas business down there; he does a lot of business with tractor trailers, he is mostly in the repair business though.

Q. Do you know how much business you are responsible for in a year? How much business do you write in a year?

A. What I write or the total?

Q. That you write.

1021 A. In a year?

Q. Yes, approximately.

A. I'll average between—about four thousand dollars a month. Some months I'll go over. This month I'm up to \$5,500.

Q. Has this been a good year?

A. Very Good.

Q. Better than last?

A. Better than last.

Q. And last year was better than the year before?

A. Oh, yes.

Q. Business has been improving?

A. Every year.

Q. I congratulate you.

Do you know what the company's business is in a year?

A. No, I have no idea what the company does.

Q. The company has been growing though, hasn't it? It's added new branches?

A. Yes, it has.

Q. What was the most recent branch, do you know?

A. We bought Tri-State Auto Parts, I think they were a subjobber of Auto Gear there in Marcus Hook. That's our branch. It's still called Tri-State Auto Parts, I think.

Q. But your company bought it?

1022 A. That's right, we bought it. It's in Marcus Hook.

Q. When did that take place?

A. I couldn't say. About six months. I couldn't say for sure. About six or eight months ago.

Q. Mr. Ferguson, do you call on Ed Holmes' Atlantic station?

A. I do not know.

Q. Well—

A. I did at one time, I haven't called on him in four years, three and a half years. I called on him for about the first three months I went out on the road.

Q. Why don't you call on him now?

A. Because we all have a set territory and another salesman from our company calls on him.

Q. I see.

A. That was only a temporary deal.

Q. How about Walter McCollough. Do you know him in Morton?

A. I don't call on Morton at all. No, that's another salesman's territory in our company. He calls on him, I imagine.

Q. Well, you do call on Chester Drozdowski?

A. That's Baker's Atlantic. Chester Poke, and Eddystone Avenue in Eddystone.

Q. Do you call on him?

A. I do.

1023 Q. Do you sell him Gates Radiator Hose?

A. I sold him a deal of Gates radiator hose at one time, this was when I first went on the road. We hung

the racks and everything, put the hoses up and collected the money. The next week I went around, it was changed over to Goodyear, now there's three or four Gates' hoses mixed in with the Goodyear even today.

Q. That is fairly common in the industry, isn't it?

A. I would say so, in Atlantic stations.

Q. Only in Atlantic stations?

A. Usually when you set up an account with a good line such as we carry, Gates hoses or fanbelts or Blue Streak ignitions, it's very, very rarely that they ever, ever change over. If you take the proper care of them.

Q. You also sell him Fram and AC?

A. No.

Q. You don't?

A. No Fram or AC.

Q. You do sell him Auto parts and equipment?

A. I sell him his equipment.

Q. You don't sell him parts?

A. I sell him a few parts, not to many.

Q. Doesn't he buy Champion plugs from you?

A. I don't handle Fram and I don't handle Champion.

Q. I see.

1024 Mr. Ballard: No more questions.

By Mr. Correa:

Q. Mr. Ferguson, you said something about batteries, didn't you? Did you mention a battery you sold?

A. Delco batteries.

Q. That's right. I couldn't remember for a moment.

Do you offer those batteries to service stations on 30, 60, 90 basis? That is payment one-third in 30 days; one-third in 60 days, one-third in 90 days?

A. Sure, I'll do better than that.

Q. I mean do you customarily? I'm just wondering what your practice is.

A. Yes.

Q. Do you offer them on any basis of a free battery if so many batteries are bought by the dealer?

A. Well, no; but we don't have any deal like that, so many free if you buy like 25 batteries, give them one free?

Q. Let's say 15.

A. I think if I took a deal like that to my boss I could get it through.

Q. Have you ever offered that deal is what I'm getting to?

A. No.

Q. Ed Parris does that, 15 batteries and one free battery.

A. I don't know.

Mr. Correa: I have no further questions.

1025 By Mr. Dias:

Q. Mr. Ferguson, you have been selling for four years?

A. That's right.

Q. Can you recall back during your first year, second year and third year, and now your current year, was there ever any time when you were selling to more Atlantic stations than you are today?

A. Well, no; I don't bother too much with the Atlantic stations because of their TBA set up. I don't bother too much with them. I have a few that I call on that I get hard parts business out of. In other words, I won't call on an Atlantic station unless he's a hustler and he will do repair work that I can get hard parts business out of him, an occasional jack or a wheel balancer, something like that. Equipment sale.

Q. But you have tried them all from time to time, have you, tried to sell them batteries and fill-ins?

A. I have tried to sell them. Yes.

Q. You were asked about Bakers, have you tried to sell Baker any filters?

A. I have never tried to sell Baker any filters.

Q. How about other accessories?

A. Oh, I've tried to sell him other accessories such as Rust Master chemicals and Prestone chemicals and never had any luck with it.

1026 Q. Did he give you any reason why he wouldn't buy them from you?

A. Well, he wouldn't buy them because he knows if he did buy them his distributor would certainly tell him about it.

Mr. Dias: That's all, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Correa: Nothing further.

Mr. Ballard: No questions.

Hearing Examiner Kolb: That's all, Mr. Ferguson.

(Witness excused.)

Mr. Thompson: If your Honor please, when Mr. Balloron left the stand he was directed to return tomorrow morning for cross-examination. So far as Atlantic is concerned I have no questions that I want to ask Mr. Balloron and if Goodyear—

Mr. Correa: (Interposing.) So far as Goodyear is concerned, your Honor, we have had opportunity since Mr. Balloron left the stand to read his testimony and we are content to rest on Mr. Kelaher's cross-examination of him.

Mr. Kelaher: Thank you.

Mr. Correa: As eliciting all the points we needed.

Mr. Kelaher: Coming from you that is a compliment.

Mr. Thompson: We thought that would permit Mr. Balloron—

Hearing Examiner Kolb: (Interposing.) Mr. Balloron will then be released and will you notify him?

Mr. Kelaher: We will notify him.

Mr. Thompson: That will permit him to spend tomorrow morning with his old friend Senator Pepper.

Mr. Kelaher: That's right. He's a good friend to have, I may add.

Mr. Dias: I call Mr. Walker, please.

GEORGE STANLEY DREW WALKER, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. George Stanley Drew Walker of Suburban Auto Parts, 221 West Lancaster Avenue, Ardmore, Pennsylvania.

Q. And could you tell us how long you have been employed by Suburban Auto Parts?

A. Just four and a half years.

Q. Will you describe or tell us a little about Suburban Auto Parts, is that an independent Company?

A. Well, it's registered as an independent corporation and it's wholly owned by the owners of the A. P. Rotzell Company.

Q. It is considered to be a branch of Rotzell, actually?

A. Well, it's registered as a separate corporation, 1028 but we buy principally through Rotzell.

Q. Do you handle the same—

A. Yes, we handle all the same products that Rotzell handles.

Q. And what is your sales territory? How are you employed, you are a salesman, are you not?

A. I'm a salesman employed on commission.

Q. What is your sales territory?

A. Well, I operate west of City Line and between the Schuylkill River and West Chester, Pennsylvania.

Q. Will you tell us the type of customer that you solicit?

A. Well, independent garages, service stations, car dealers and some fleets.

Q. Did you say service stations?

A. Service stations, yes.

Q. Among the service stations are there any Atlantic stations?

A. There are a number of Atlantic stations in the territory, I don't go into all of them.

Q. Can you tell us approximately how many there are?

A. Well, there's from, oh, between 12 and 20, I imagine in that territory.

Q. How many do you call on, Mr. Walker?

A. Well, I call on about eight of them fairly regularly and the others I stop in once in a while.

Q. And how often is regularly?

1029 A. Well, about six of them once a week and the others maybe once a month.

Q. And those other four?

A. The other four, would be anything special comes up of interest I stop in there.

Q. The six that you call on regularly, can you tell us what products you sell to them? Can you name those stations?

A. Well, I sell mostly parts that they need in the repair business, mufflers, shock absorbers, if they need an odd battery that they don't stock in a hurry, we give them that. In other words, if we give them better service where they'd lost a customer, we do that.

Q. Who is their regular supplier?

A. Ernest Miller of Upper Darby.

Q. What products does he supply?

A. Mostly Goodyear tires and batteries, DuPont chemicals and one or two others, I don't know his full line.

Q. These Atlantic stations in your territory, do they advertise TBA products about their stations?

A. Well, they have been on display on their shelves and they use the regular window streamers and that sort of thing.

Q. What products do they advertise?

A. They all have the full line of DuPont chemicals and the lessee stations have Goodyear tires and batteries, some of the independents have other brands.

1030 Q. How many independents are in your territory?

A. Well, there's either two or three. There's one out the end of this week and there's one, I think that went back under company control, so there are really only about two completely independent.

Q. How do you define "independent"?

A. Well, where the fellow has complete control over the real estate where he operates.

Q. And what do they advertise? What do those independents advertise?

A. Well, I think the two that are operating now have got Lee tires and one has got Lee batteries. The other has Willard batteries and then they have a variety of accessories. They carry the DuPont line.

Q. Would you care to name those two stations for us?

A. Lou Dorn in Broomall and there's Wynnewood Park Service Station on Haverford Road in Wynnewood. The other one is in Garrett Road, he's going out of business in another week, he's turning it over to another oil company, not Atlantic.

Q. These lessees in your territory, do you attempt to sell them batteries, your batteries?

A. Only we let them know that we have batteries and when they need them they can call.

1032 Next question.

Mr. Dias: I thought there was one pending.

By Mr. Dias:

Q. Sir, let me ask you. Did they give you a reason?

A. Yes.

Q. Now, who was it gave you a reason? Which particular station operator, can you name him?

A. Jim Daley out in Kenwood.

1033 Q. And when did he make this statement to you?

A. The early part of this year.

Q. And what reason did he give you for not buying the batteries?

A. Because there was a possibility he might move from that station or Atlantic might give up the location and then he'd be stuck with them.

Q. Were there other similar statements by other dealers made to you?

A. Well, there's—

Mr. Correa: I object to that question, if your Honor please, "were other similar statements made to you by other dealers?"

Mr. Dias: I don't know how I can find out whether or not there were—

Hearing Examiner Kolb: I think that question is all right. He may answer yes or not to that.

Mr. Dias: You may answer yes or no, Mr. Walker.

The Witness: Yes.

By Mr. Dias:

Q. Now, will you tell us when and by whom and the substance of the statements?

A. Well, we always get the statement, whether it's a brush off is like the fellow who says, "Well, I'll keep you in mind." "Well, you know I can't handle your products because I have to handle the others."

1034 Q. I'm asking you for a specific statement by a specific operator. Can you recall any other Atlantic operator that made this specific statement to you?

A. I can recall some years ago when Al Godino was operating the station on Belmont Avenue in Belmont Hills saying he couldn't buy accessories from us even if he could get them cheaper.

Q. And did he tell you why he couldn't buy them from you?

A. Because he said that his contract with Atlantic, he'd have to get these accessories through their approved source.

Mr. Ballard: I now move to strike the last answer, your Honor, unless we know when some years ago is.

The Witness: Early part of '53.

By Mr. Dias:

Q. Did you say "several years"?

A. In the early part of '53 when I first started on the job.

Q. When in '53?

A. The early part of '53.

Q. You gave us his name?

A. Al Godino.

Mr. Dias: Off the record.

Hearing Examiner: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

1035 Mr. Ballard: I withdraw the motion to strike, your Honor, in order to straighten out the record.

By Mr. Dias:

Q. Mr. Walker, I may have asked you this, but if so I have forgotten.

Do you know who the Goodyear supplier is in your territory?

A. Yes. Ernest Miller of Upper Darby.

Mr. Dias: That's all, your Honor.

Hearing Examiner Kolb: Cross-examine.

Cross-Examination by Mr. Ballard.

Q. Mr. Walker, you, of course, also call on Korbo,
A. Korbo, trading as Korbo Brothers Atlantic Station?

A. No.

Q. You don't call on them?

A. No.

Q. Do you call on J. Gill at—

A. Occasionally, yes.

Q. And do you sell anything to Mr. Gill?

A. Not recently, no.

Q. Did you used to sell him anything?

A. We sold him a little but he has a brother-in-law
working for a competitive house and so he gives the busi-
ness to the family.

1036 Q. What house was that?

A. In Auto Gear and Radiator I think they call
themselves in Chester.

Q. Are they big competitors of yours?

A. Not too much, but they come in on some products
in some parts of the territory.

Q. How about Henry Matus at Haverford Road and
Bryn Mawr?

A. Occasionally.

Q. What do you sell him?

A. Nothing lately. Some mufflers at one time.

Q. You don't sell him any chemicals?

A. No.

Q. Why doesn't he buy chemicals from you?

A. I haven't been calling on him too regularly, he
hasn't been in there too long. I called on his predecessor.

Q. Did he ever give you any reason for not buying the
chemicals?

A. No, he hasn't.

Q. Do you happen to know whether he's a lessee sta-
tion or not?

A. I don't believe Atlantic owns that property.

Q. You don't think so?

A. And I don't know the terms of his lease.

Q. And now how about J. J. Ryan, do you go out as far as Radnor?

1037 A. Yes, I see Ryan once in a while, but I wouldn't classify Ryan as a service station; it's a grocery store.

Q. Do you sell him chemicals?

A. Once in a while.

Q. How about Davis Brothers in Bryn Mawr?

A. Well, Davis Brothers, at least they have got a garage there, but they hardly do any work in there at all.

Q. Do you sell them anything?

A. No, they don't use any of our parts.

Q. Do you call on them?

A. Once in a while just to say hellow. They don't do any business, it's just a store and garage.

Q. How about DeMar Company at—

A. That's Wynnewood Park Service Station?

Q. That's right.

A. I call on them.

Q. Do you sell them anything?

A. Chemicals occasionally and parts for his inspection station.

Q. Hard parts that is?

A. Yes.

Q. Did you ever sell him any batteries?

A. No. Well, if he's stuck for them once in a while, it's Willard batteries and he buys them from a jobber.

Q. How about Mr. Gill on Darby Road?

1038 A. I said I used to call on him. He's the one that has a relation in the business.

Q. That's right. Excuse me.

And the number of customers that you carry all told?

A. About 200.

Mr. Ballard: I have no further questions.

By Mr. Correa:

Q. Do you sell batteries, sir?

A. Yes.

Q. What kind? Perhaps you said but if you did I'm afraid I missed it.

A. Delco.

Q. And you offer batteries to sell to service stations?

A. Yes.

Q. Including Atlantic Service Stations?

Have you ever offered Delco batteries on the basis of one free battery with every 15?

A. No. Those batteries sell for the same price whether they go to a General Motors dealer or service station.

Q. So you don't make any offer?

A. We don't make any price concession to anybody.

Q. Now, does Mr. Ernest Miller offer batteries for sale, Goodyear batteries on the basis of 1 free with every 15 that the service station buys?

A. I don't know his price structure at all.

1039 Q. You don't know that?

A. I don't know what he does.

Mr. Correa: No further questions. Thank you.

Mr. Dias: That's all, sir.

Hearing Examiner Kolb: Is that all?

Mr. Dias: That's all.

Hearing Examiner Kolb: That's all, Mr. Walker.

(Witness excused.)

Hearing Examiner Kolb: We will take a five minute recess.

(Whereupon, a short recess was taken.)

1040 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: Mr. Examiner, we are now going to get back to Commission Exhibit for identification 101-A through Z-20. This is identified in the record at page 22 and I quote, "Document entitled 'TBA Study,' dated May, 1949, Sales Research Section, the Atlantic Refining Company."

At the hearing on March 7, 1957, at the beginning of page 73, this document was offered into evidence. At that time objections were raised by counsel for both respondents, and considerable discussion ensued, which carries through page 83 of the transcript. On page 83 of the transcript the offer was withdrawn tentatively as a result of your Honor's suggestion that a witness be called who would be qualified to discuss the document itself.

Since that time respondent Atlantic has furnished us with the name of J. L. McIntire, and at this time I would like to call him to the stand.

JAMES L. McINTIRE was called as a witness for the Commission and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Home Address?

1041 Q. Yes.

A. J. L. McIntire: 2258 North 53rd Street, Philadelphia.

Q. What is your first name?

A. James.

Q. And are you presently employed with Atlantic Refining Company?

A. Yes, sir. I am.

Q. And for how many years have you been employed with them?

A. Twenty-one.

Q. And at one time were you in the Sales Research Section of Atlantic Refining Company?

A. Yes, sir. I was.

Q. During what period?

A. Well, it ended in 1950, at the Korean War. I think it started about 1948, late '47 or early '48.

Q. And what were your duties in the Sales Research Section?

A. I was the manager of it.

Q. And what would the duties of the manager involve or entail?

Q. We would make studies in the market as we were requested by the sales managers, if they had a problem on which they wanted an analysis of the market or a consumer survey or dealer survey, then we would make it.

Q. Did you have training to make such studies?

A. No, sir. I am afraid not, except as I had acquired it by trial and error.

Q. Did you have prior experience in the field?

A. Yes. I had been a salesman before the war and then after the war I had worked for the Assistant General Manager of Sales, as a sort of a field investigator for him. That was the thing that eventually materialized into a formal Sales Research or Sales—I think we called it Sales Research Section.

Q. What has become—when did that, become officially known as the Sales Research Section?

A. About 1948.

Q. Were you in charge of the Section?

A. Yes. I was the first person in charge.

Q. And just to—this may be repeating, but to clarify your duties, you did make surveys of various types for management, is that correct?

A. That is correct, yes, sir.

Q. And what type of surveys did you prepare?

A. Well, I will have to try to remember. Let's see, some surveys of course you had to employ outside interest just to make. Some surveys we made with our own personnel. We had four or five people in that section. We made such surveys as trying to evaluate the desirability of this prospective service station site versus this one. We ran what we called market studies to find out what percentage of the market the various brands of gasoline 1043 enjoyed in that particular market. We did a study connected with what the consumer wanted in his service station. In other words, did they want their windshield wiped, or didn't they, and things like that. There were quite a few. I can't remember them all, but that gives, I think, some idea.

Q. I now show you Commission Exhibit 101-A through Z-20 and ask you to state what it is?

A. That is the so-called TBA study that we made. This is May, 1949.

Q. Now were you in charge of this particular study?

A. Yes, sir, I was.

Q. Now would you please state what methods were used in preparing this study?

A. Well, I guess the method would be called a somewhat modified depth interview. We arranged through an outside firm, Stewart Dougall and Associates, to furnish interviews. I don't remember how many cities, but I suppose it is in here, and then one of the junior partners of Stewart Dougall and myself designed this questionnaire and Stewart Dougall's interviewers took it around and filled in the answers.

Q. So you and the associate designed the questionnaire upon which that survey is based?

A. Yes.

Q. Now on the first page of that, that would be Commission Exhibit for identification 101-B. I would like you to read the first paragraph there.

1044 A. "This study represents the opinions and the attitudes of 1,071 dealers in 47 cities from Massachusetts to Florida. These dealers were chosen on a random basis within the following limits."

Do you want the rest?

Q. Is this a correct statement?

A. Yes, sir.

"(1), a quota for each brand based on that brand's acceptance in the city.

"(2) Satisfy the definition of a promotable dealer."

Do you want me to read the rest?

Q. That will be sufficient.

Are any of the basic records still available which form the basis for this document 101-A to 101-Z-20?

A. I would say 85 percent of them seem to have disappeared. Here and there a copy of the report and a couple of questionnaires, which are only a very small part of the whole. I even ascertained that the records of the company in New York were destroyed. They keep them four or five years, but this goes back some years. There is no complete data available.

Q. However, there are reports available, are there not?

A. Yes, sir, such as this one.

Q. I am talking about basic source data now.

A. There are one or two folders of basic source data.

Mr. Kelaher: Your Honor, at this time I would
1045 like to refer to a stipulation entered into with counsel for the respondent Atlantic and refer to page 318 of the transcript. In reference to a question as to whether or not—in response to a question concerning Commission Exhibit for identification 101-A through Z-20, the question was, "Origin and so forth, is basic data available?" "An-

swer. Reports are available for interviews believed to have been conducted in Boston, Massachusetts, Fall River, Massachusetts, Johnstown, Pennsylvania, Philadelphia, Pennsylvania, Pittsburgh, Pennsylvania, and Trenton, New Jersey."

Is that correct, Mr. McIntire?

The Witness: Yes, sir.

By Mr. Kelaher:

Q. Mr. McIntire, the reports available would show the questionnaire form that was used to prepare this summary, isn't that correct?

A. Oh, yes, sir.

Mr. Kelaher: Your Honor, at this time I offer Commission Exhibit 101-A through Z-20 into evidence (handing document to Examiner).

Mr. Ballard: Would you care to hear the respondents now, sir, or would you like to read it?

Hearing Examiner Kolb: Let me see what it says.

Mr. Ballard: Your Honor, with regard to this document, the first problem I have is the purpose for which 1046 it is offered.

As your Honor can see, it is a tabulation, under a number of headings, and I would like to find out if I could whether it is offered to prove that the dealers said the answers attributed to them, that that is their attitude, is it state of mind testimony, and if so, the dealers of course are not identified. When we know what the purpose of the offer is, your Honor, I would like to reserve the right to question this witness on voir dire in order to elucidate some points which I think have not been brought out about the nature of this study and the reliability of the information that is presented.

Mr. Mason: If your Honor please, we feel that this document is wholly irrelevant, so far as Goodyear is con-

cerned. In the first place, it antedates any time that there was a sales commission arrangement between Good-year and Atlantic.

Furthermore, it is in the nature of opinion evidence and it should be fully qualified by a detailed exposition of the techniques by which the document was prepared.

Mr. Kelaher: Mr. Examiner, we argued this at length on March 7, but I would like to call several important facts to your attention for your consideration. This was prepared in 1949—

Hearing Examiner Kolb: Let me see that transcript a minute please.

1047 (Document handed to Examiner.)

Hearing Examiner Kolb: I believe the purpose is stated in the record at the bottom of page 75.

Mr. Ballard: Mr. Kelaher, could I look at that record? Your Honor, with respect to the statement at the bottom of page 75 of the record, to which you have directed our attention, that statement is a statement by Mr. Kelaher, which reads as follows: "Your Honor, we are offering this with respect to respondent Atlantic to show you the research engaged in by respondent Atlantic in determining which marketing alternative it would adopt."

Your Honor, I am not certain what that language means. We, of course, admit and will be glad to stipulate, what research was done. In fact, the witness testified without objection as to the research that was made and if that is all Mr. Kelaher wishes, I don't see that the report itself adds anything to it. If by this language he wishes to bring in the substance of the report and not merely the fact that the research was done, and the report was rendered, then we must object to it, your Honor.

And I again ask for an opportunity to question the witness before your Honor rules on admissibility.

Mr. Kelaher: Your Honor, just so there will be no mis-

understanding about it, it would be sort of ridiculous 1048 to offer the survey if I just wanted to show it was made. I am offering the survey as proof of the facts stated therein. Its trustworthiness has been established; it was prepared by the Manager of the Sales Research Section of the Atlantic Refining Company. He has testified as to the sound procedures used. It reflects the preference of Atlantic dealers for TBA at that time, and I would like to call your Honor's attention to Commission Exhibit 136-A through D. This is an inter-office letter from Mr. S. J. Heidman, who at that time was Atlantic's manager of TBA sales, to D. T. Colley of Atlantic, who was and is Vice President of that company, and the subject matter is: "TBA conversion to Firestone and Goodyear programs," and it is stated right in the letter all the steps that were taken before Atlantic decided to convert to the Firestone and Goodyear TBA programs. And among such steps I would like to read you a paragraph, the second full paragraph of 136-B.

"Having established the fact that our TBA program was somewhat unique among oil companies, we then employed an outside agency to sample opinions of both Atlantic dealers and competitive dealers in our area. The important finding from this survey was that our present program was far from flawless and that there was a great deal of dissatisfaction with it among our dealers. The dealers of other marketers appeared more content with the TBA programs that were available to them."

It is very clear, your Honor, that Atlantic placed 1049 great emphasis on this report. We think we are entitled to have that report in the record. It certainly is an important factor in this case. It is relevant; it is material; it is competent. And we think that we now have the witness here; counsel for either respondent has him available for cross-examination, and we see no reason why it shouldn't be admitted.

Mr. Mason: If your Honor please, I think this document is wholly inadmissible as to Goodyear. A minimum requirement to qualify such a document which purports to be a survey, is that the basic material be available, and here the witness says that it is unavailable. So that so far as we are concerned, we have no way of checking the authenticity and soundness of the procedures by which this document was arrived at.

Mr. Ballard: Your Honor, one point.

Mr. Kelaher, may I see that exhibit again?

(Document handed to counsel.)

Mr. Ballard: If this document is being offered in substantiation of the statements Mr. Kelaher read, which were to show that the present program was far from flawless and there was a great deal of dissatisfaction with it among Atlantic dealers, by the present program they meant, of course, the program in 1949, then while it is cumulative evidence, we would not object to it, if that is what Mr. Kelaher says it shows.

1050 I might point out that as a perfectly good example of the fact that this document is an ambiguous one, those statements are somewhat difficult to reconcile with the statements on the face of the document itself. It appears that each person who reads this document can draw different conclusions from it, and I submit, your Honor, that it is not reliable evidence of the facts stated therein.

Mr. Kelaher: Now, your Honor, it was considered reliable evidence by Atlantic Refining Company when it converted to the Goodyear TBA program, and I think the record also shows they began this exploration of marketing alternatives prior to 1949.

Mr. Ballard: Will you stipulate with me that this document shows that Atlantic dealers were far from satisfied and that the program they were then using was far from flawless?

Mr. Kelaher: I am offering the document in evidence to speak for itself. You ask me to stipulate to something which is meaningless when we have the survey here.

Mr. Mason: Are you limiting your offer to Atlantic?

Mr. Kelaher: I am not.

Mr. Mason: Obviously the considerations of Goodyear are quite different from anything Mr. Kelaher mentioned.

Hearing Examiner Kolb: It looks to me as though the survey is exact and has been properly taken. If the 1051 underlying data is not available, it would seem to me that it would be competent to go in after cross examination of the witness. Atlantic had the survey made, they apparently had at one time these documents available; they know what it is all about, and I can't see how Atlantic can make an objection to it on the basis of the underlying data not being available.

Mr. Ballard: If your Honor please, if your feelings are as expressed, then I would like an opportunity to examine this witness in the matter of Voir Dire, before you finally rule.

Hearing Examiner Kolb: Yes, I intended to do that. I was just making those remarks as to my reaction at the present time. I am not ruling on the question. You may proceed.

Mr. Mason: Is your Honor ruling on the Goodyear objection?

Hearing Examiner Kolb: I don't know yet how much of the data is available.

Mr. Mason: I submit it is plain it hasn't been qualified yet.

Hearing Examiner Kolb: He said he has the data available for various localities.

Mr. Mason: Yes, but on the face of the document it says it covers the entire Atlantic marketing area 1051A and it has been testified that only a portion of the

data exists and the witness testified that the records of the company making the survey have been destroyed and about 85 percent of the underlying material has been destroyed. Now that means that the data is not available for checking by Goodyear.

1052

Voir Dire Examination by Mr. Ballard.

Q. Mr. McIntire, with respect to this study, Commission's exhibit 101-A through Z-20, do you have in your file a copy of the questionnaire that was used in preparing this study?

A. Yes, sir.

Q. May I see that, please?

A. Yes, sir. (Handing.)

Mr. Ballard: I ask that the reporter mark this document as Respondent's exhibit A-5 for identification.

(The document referred to was marked Respondent's exhibit A-5 for identification.)

By Mr. Ballard:

Q. Now I refer you, sir, to the first page of this questionnaire, and ask you if those are the questions that were used in deciding whether the particular service station was a promotable dealer?

A. Some were. The one that says "Lubrication facilities," this was designed to screen out stations that the interviewers might erroneously include.

We had told them, evidently, from the front of this—I am sorry, the instructions aren't available—we wanted to get promotable dealers and one definition would be that he could provide lubrication facilities. So if the questionnaire had come in with no lubrication facilities, it would have been thrown out as a non-promotable dealer. The checking of the lubrication facilities is a sort of a check on the data here. Similarly, stations

doing under 10,000 gallons of gasoline a year obviously is not what the oil company would call a promotable station, therefore we weren't particularly interested in their attitudes or opinions.

Q. Now if a man checked "yes" on lubrication facilities and showed over 10,000 gallons of gasoline a year, you would accept him as a promotable dealer, regardless of whether he owned the station or leased the station. Is that right?

A. Oh, yes; well, I am not sure whether it was 10,000 or 25,000 that we used as our final break on promotable, but the substance of your question—it didn't make any difference whether he owned or leased the station.

Q. Did it make any difference, if he leased it, whether he leased it from the oil company, from a distributor, or some other landlord?

A. Not a bit.

Q. You accepted all of those?

A. Yes. As far as defining a promotable dealer.

Q. And did it make any difference whether he purchased—I am now on this questionnaire—purchased from the oil company who owned the brand name, through a distributor, from an agent, from a wholesale dealer, or some other source?

A. No. That may sound confusing, but when we 1054 originally planned this survey, we had hoped to spend considerably more money and have a much much bigger sample, in which case we could have controlled all these various breaks and cross sample their answers, but we didn't have that, so a lot of this was never usable.

Q. So when this survey refers to petroleum supplier, that could mean the oil company?

A. Yes, sir.

Q. It could mean a distributor?

A. Yes, sir.

Q. It could mean an agent?

A. Yes, sir.

Q. It could mean a wholesale dealer?

A. Surely.

Q. And if there are any other sources, it could mean those?

A. Anybody who supplied them with petroleum products.

Q. Now, turning for a moment to—

Hearing Examiner Kolb: (Interposing.) Before you get away from that, if a man answered no on lubrication, but did purchase more than 10,000 gallons of gas, was that thrown out?

The Witness: I didn't understand you, sir.

Hearing Examiner Kolb: You were telling about lubricating facilities. Where the party would answer no, as to having lubricating facilities, but does purchase more than 10,000 gallons of gasoline, would that be used?

The Witness: He would not be considered a profitable dealer.

Hearing Examiner Kolb: Regardless of the amount of gasoline he might use?

The Witness: Yes, sir.

By Mr. Ballard:

Q. Now, Mr. McIntire, there were instructions that went along with this questionnaire?

A. Yes there were instructions that went along with it.

Q. Were they written instructions?

A. They were written instructions, written and prepared by Stewart Dougall in conjunction with myself, because the interviewers were employees of Stewart Dougall.

Q. Did you search your files for copies of those instructions?

A. Yes. See, when I left, first of all remember I left

the department and I think it has had three different managers since I left, and each one keeps different files and different systems, so what I did was contact the new present manager who assured me he had searched his files and there is no data relative to this survey there.

Q. Were the interviewers given oral instructions as well?

A. No, sir.

Q. They were given written instructions and the questionnaires?

A. That is correct.

1056 Q. Now turning to question 1 on page 1 of the report itself, that is, Commission's exhibit 101-C, you see at the top of the page a question which is in the form of a question.

Was that the question the interviewers were supposed to ask the station operator? Were those the words that they were supposed to use in asking the station operator the question?

A. No, sir.

Q. According to the questionnaire, what were those words?

Hearing Examiner Kolb: I thought this document was the questionnaire.

Mr. Ballard: The fact is that in preparing the report, that is to say—I don't want to make more of a mystery than this is—in preparing the report they used the form of questions, but those are not the questions that appear on the questionnaire. So in each case, you have to go back to the questionnaire and see what the question was, to find out the purport of the answers.

It is made even more difficult by the fact that they didn't follow the same numbering.

What I am trying to ask him is that the question which appears as question 1 of the report itself, the actual Com-

mission exhibit, is not the same as the question which appears on the questionnaire.

I wanted to call that to your Honor's attention:

Mr. Kelaher: If I am looking at the same thing, 1057 Mr. Ballard is looking at, I can't see any great difference.

Mr. Ballard: Your Honor, the differences may not appear great in all cases. I think, as you progress, there may be some that are of more importance. But I want to call the witness' attention to the introductory remark, which the interviewer was supposed to make.

The Witness: The interviewer would read all of this and there was a multiple choice of three and a reason, so that multiple choice 1 was matched with its reason as 1, and the next multiple choice with its reasons, as 2, and the further along you go, the more the spread between correlating questions and answers, but this was only prepared for our internal use, and therefore at the time it didn't appear very important. It appears rather important at this point, if you are trying to understand it, but it didn't eight years ago.

By Mr. Ballard:

Q. Now you asked the dealer this question; you asked the station operator—at least you hoped your investigators asked the station operator this question: "Assume for the moment that you did not carry a line of tires, batteries and accessories and you were just about to put in a line of such merchandise. Under such circumstances, do you think you would prefer to buy all your major TBA items from one source or from several sources?"

A. That is right.

1058 Q. The operator was then given an opportunity to check "one", "several", or "Don't know." Then the investigator was supposed to ask for answers to this question: "Why?" and those I take it were free answers?

A. That is correct.

Q. In other words, no answer was suggested to the operator there?

A. No, sir. They couldn't, because you were using women interviewers, who wouldn't have the faintest—at least I am sure the majority of them wouldn't—have any knowledge about such things.

Hearing Examiner Kolb: Where is your last question transferred into your survey?

Mr. Ballard: I am coming to that. The answers to the "Why" question appear I believe—I hope your Honor will pardon a certain amount of leading—but I believe they appear do they not on page 2?

The Witness: No, they appear—

By Mr. Ballard:

Q. The answer to the "Why" question.

A. Oh, yes, they appear on 2 and 3.

Q. Pages 2 and 3 of the report itself, is that right?

A. Yes.

Q. And 2 is Commission's exhibit 101-D and 3 is 101-E?

A. That is a continuation of the same thing. May I explain?

1059 Mr. Ballard: Please do.

Mr. Kelaher: I think it might be helpful to let the witness explain this.

The Witness: This question was posed, just as Mr. Ballard said. I pose this question to this gentleman here and he says "one source." You check "one source," and you say "Why?". And he writes it in. The interviewer writes in what he says.

Now he would appear on page 1, under the caption "Prefer one source for TBA," but his "Why" would appear on page 2, under the caption "why do you prefer one source for your TBA (asked only of those making this preference in question 2).

Now the next gentleman says "Several." He would also appear on page 1, but down under the "Prefer several," but his "why" would appear over here on page 4 under the caption, Question 2(b), "Why do you prefer several sources? (asked only of those making this preference in 1).

Do you follow me?

Mr. Kelaher: That is very clear.

By Mr. Ballard:

Q. Now, Mr. McIntire, turning to page 2 of the report, Exhibit 101-D, this page purports to give the answers as to why those who preferred one source had that preference.

A. That is correct.

1060 Q. Now for instance the second column there headed "2" says "Price." I take it that you classified the various answers into these categories, is that right?

A. That is correct.

Q. If the man said—mentioned price protection, where would that be?

A. That would be in "Price."

Q. If he mentioned "long margin," where would that be?

A. "Price."

Q. If he mentioned "low price to the consumer"?

A. "Price."

Q. If he mentioned "quantity discounts," where would that be?

A. That would be "price."

Q. Now if he mentioned "guarantee by the supplier," where would that be?

A. That would be "guarantee."

Q. Suppose he mentioned guarantee by the manufacturer of the tires?

A. That would still be under "guarantee."

Q. I suppose it would be a variety of reasons that might be catalogued under "service," is that right?

A. Oh—

Mr. Kelaher: Objection, your Honor. I can appreciate Mr. Ballard's trying to expedite the matter, but I think on some questions it might be helpful if he just asked 1061 the witness what went under those categories.

Mr. Ballard: I will accept your recommendation, Mr. Kelaher.

By Mr. Ballard:

Q. Would you state, Mr. Witness, what is included under the category "service," if you know?

A. Well, I will try to remember. It is quite a while ago and I haven't done this kind of thing for a long time. Certainly speedy delivery. Satisfaction billing in that the billing came out and they were the wrong bills and they were always in hassels back and forth with the supplier. Availability of merchandise, close by, which is more or less a corollary of delivery.

You see, these people, especially being in different cities and different nationalities, and what-not, sometimes they say the same thing in a variety of ways. And then it becomes as any type of survey of this nature, somebody has to arbitrarily sit down and say this is apples and this is oranges, and this is wrong and that is what we did.

By Mr. Ballard:

Q. The only way we could check your divisions into apples and oranges would be to examine the original questionnaires?

A. That is correct. The rule was, I know, that anything that said "guarantee", that is clean, and anything that has to do with money, whether it be margins, discounts, or what, that is "price."

1062 Now where we differentiated between for example "acceptance" and "quality," which are more or less synonymous, I couldn't tell you. "Service" would include assistance, promotional assistance as distinguished from advertising.

Q. Now I don't wish to prolong this unduly. It must be apparent that this same line of questioning could be repeated as to almost every question here.

But now I would like to call your attention to question number 4 of the report, which appears on page 7 of the report, Commission's exhibit 101-I. The questionnaire asks "What brand of tires would you prefer"—

Hearing Examiner Kolb: (Interposing.) Which document are you on now?

Mr. Ballard: The report, sir, itself, exhibit 101-I, page 7.

Mr. Dias: What is the comparable question?

Mr. Ballard: I think it is 3-A.

The Witness: 3(a), yes.

Mr. Ballard: Question 4 on the report shows the answers to question 3(a) on the questionnaire form. I am sorry, but it does.

By Mr. Ballard:

Q. Now the question that was asked—or at least that you believe was actually asked, was the one on the questionnaire under 3(a), is that right?

1063 A. That is correct.

Q. Would you read that question?

A. "Assuming that you are about to put in a line of TBA and forgetting your present commitments, which of the following named brands of tires (these represent about 4 out of every 5 tires sold) would you prefer to sell?" And then there is a list of Firestone, Goodyear, Lee, Goodrich, U.S., General, Kelly, Seiberling, Your Oil Company's Brand, and other. (Specify.)

And that, regardless of what they said, had to fall into something here. That pretty well covers it, doesn't it?

Then the next part of the question "Why would you prefer this brand?"

Q. Now in your capacity as head of this research section, did you think that that question was enough to distinguish the brand of tire from the method of selling same?

A. No, they are bound up together.

Q. In other words, if a man was handling Lee tires or you knew the method of selling and buying Lee tires, and expressed a preference for Lee tires, do you believe that his preference was for the brand or for buying pattern, or for both?

A. I don't know. That wasn't part of the reason for having this study made. We were trying to find out, as it said in the front, the attitude and opinion of our dealers.

Mr. Kelaher: These figures are on 101.

1064 By Mr. Ballard:

Q. Now keeping in mind the question, would that question—would the answers to that question be the foundation for your first conclusion on the first page of this survey? I refer to the conclusion that reads as follows: "A preference among Atlantic's dealers for Lee tires and Exide batteries".

A. That is satisfaction. That is very important.

In other words, that says—we felt our dealers—and of course all things are relative, but we felt our dealers were satisfied with what they had at that time.

Q. By "what they had" do you mean the brand or the buying pattern?

A. I mean both, because they could buy Lee tires from Lee's branch stores had they preferred Lee and not liked us to distribute Lee. There were Lee stores in most of

the major cities, and had been since the days I was a salesman back before the war, who sold Lee tires to service stations, garages, and so forth, just as we were selling them to our dealers.

Q. In your view, does the answer show that dealers were satisfied with their way of buying or with the brand, or both?

A. Well, both.

Mr. Kelaher: Your Honor, he has answered the question two or three times. I think it is pretty clear by this time they preferred Lee tires.

Mr. Ballard: It seems they preferred both.

1065 The Witness: You must put it together with questions 8 and 6. Question 4 says what brand do you prefer; question 6 says "What do you sell?" and question 8 says, "From what type of supplier would you prefer to buy?" and then on to question 10, and on a survey of this type, to get a conclusion, you have to put the various pieces together.

Mr. Kelaher: It still winds up Lee tires and Exide batteries, does it not?

Mr. Ballard: Are you questioning the witness?

Mr. Kelaher: I am just trying to follow you, hopping around and I hope you will forgive me.

Mr. Ballard: I am trying not to, any more than is necessary.

Mr. Kelaher: I know you are.

By Mr. Ballard:

Q. Turning now to question 7 in the report, which is Commission's exhibit for identification 101-M, the corresponding question on the questionnaire, I believe, is number 5(a), is that not right?

A. That is right.

Q. Check and be sure.

A. Yes.

Q. Now would you explain the circumstances under which the question was to be asked and the full question? In other words, would you tell us how that question fits into the questionnaire?

1066 Mr. Kelaher: Are you referring to 5(a)?

Mr. Ballard: Questionnaire 5(a).

The Witness: And question 7 in the answers. Well, 5(a) couldn't be asked unless you asked 4. 4 says, "What brand of tires do you carry now?" And you are given two places, (1) and (2).

And then it says, "If one or more brands are not the same as preferred," you ask them "Why don't you carry your preferred brand?"

But if one or more of the tires which they carry are the same as their preferred brand, you don't ask them. They become the "I do's."

By Mr. Ballard:

Q. What does the word "exclusively" have to do with it? I see that on question 5(a).

A. I don't know. I can't remember that much of the detail that far back.

Q. Was the investigator supposed to say "Why don't you carry your preferred brand," or was he supposed to say "Why don't you carry your preferred brand exclusively."?

A. Frankly, I couldn't tell you without the instructions because up here it says "If one or more are the same," then this was to be asked. Now whether we had in the instructions a break between the one only and the one or more, I don't know.

1067 Q. If a man had showed a preference for let's say Firestone tires, and he showed in number 4 that he was carrying both Firestone tires and Kelly tires,

don't you think the question for 5(a) would be "Why don't you carry Firestone tires exclusively"?

A. I don't know.

Mr. Kelaher: Objection, your Honor. I think that is speculative.

Hearing Examiner Kolb: I think we are getting into speculation as to why these questions on this questionnaire were drawn. Certainly conclusions were reached from that questionnaire which became a part of the survey.

Mr. Mason: Which we don't have.

By Mr. Ballard:

Q. Now referring then to the reported answers, the answers to this question 7 in your report, you have there a category entitled "Obligation to Petroleum Supplier." Would you state to the best of your recollection what kinds of answers you might have put under that?

A. This questionnaire was designed and the interpretation of it—this I do remember—to show us as unfavorably as possible. In other words, if there was anything on the shady zone, it was thrown against us, because we were looking for things which we should correct in order to improve, if necessary our relationship with our dealers.

Therefore, anything that implied any relationship
1068 whatsoever, be it friendly, contractual, or anything else, between the company and the dealer, which induced him to buy, was arbitrarily categorized "Obligations to Petroleum Supplier," and that gave you a piece there and of course competitive dealers were coded the same way, so your relative measurement remained true, but any inferences of corrected measures needed would be heavily weighted against us.

Does that explain it?

By Mr. Ballard:

Q. I think it does. If a dealer stated that he had a relationship—say he was a relation of his petroleum supplier's dealer, would that be—

A. What is that?

Q. If he was the brother-in-law of his petroleum supplier's salesman, would that be "Obligation to Petroleum Supplier"?

A. I don't recall we ever had one quite like that, but if he said "I like the salesman," or "I like the company," or "I always buy everything from the company," that was put in that category.

Q. That was put in "Obligation to Petroleum Supplier"?

A. Yes.

You must remember this thing was designed for our internal usage and not designed for this particular type of thing or obviously it would have been—I mean by 1069 that the questions and answers at least would have carried the same numbers, so we wouldn't have to go back and fourth.

Q. Let me take one more question, and then I will stop. I am sure that my point has been gotten across.

Will you turn to the next page, which is page 12 of the report, Commission's exhibit 101-N. Now the question on that I think is 6(a) in the questionnaire?

A. Yes.

Q. Would you read the question and the questionnaire for us?

A. "Still assuming you were about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your tires?

"For example, to name a few types, there are: Your petroleum supplier; the tire manufacturer; the independ-

ent distributor of tires; another dealer acting as a supplier; an automotive jobber; a wagon peddler; other (Describe)".

In case they mentioned one that didn't fall into that category, they had the "other". And then "No preference."

Q. Now do you remember whether your instructions contained any definition of "buy", as, for instance, was a man instructed to consider who was selling, who was taking the orders, who was making delivery, who was sending the bills?

A. The interviewer?

Q. Yes. Was he instructed as to which of those 1070 was the man from whom the dealer was buying?

A. I doubt it. I don't remember.

Q. In other words, the dealer could use his choice as to who was selling and from whom he was buying?

A. Yes.

Mr. Ballard: I don't think I have any further questions, your Honor.

By Mr. Mason:

Q. Mr. McIntire, if some third person were asked to check the validity and reliability of this study, what material would they have to have before them to make such a check?

A. Well, you would have to have the questionnaires and I suppose, number two, the names and addresses of the people that filled them out, the people who were interviewed, I should say.

Q. Would you need to have this instruction sheet that went out with the questionnaire?

A. Sure, you would have to have the whole package, if you were out to spot check it, I imagine, leading up to it. If you were out to spot check it, you would have to have it, and those things were available up until — Stewart

Dougall, who would have had the names and addresses, destroy their files after I think it is five years, so up until 1952 that material was available.

Q. If you had let's say I were to hire, on Good-1071 year's behalf, a market research firm to check whether this was a sound study, what kind of material would they ask for, from your experience in this field?

A. They would ask you for the questionnaires.

Q. And the whole—

A. (Interposing.) And the instructions you gave to the interviewer.

Q. Are those questionnaires available?

A. I understand, from the thing read and that is the way I was told it, that there are about five cities out of the 40-odd of which some part of the questionnaires are available. Of course it was a mass of data at the time that was taken.

Q. Would that remnant be enough to check the survey?

A. Oh, no. If you are going to check a survey, you have all—just as this survey says, you need a random sample. You have to set up some kind of a system. You would have to take a cross sample, in order to get a cross-section, and that is just plain statistics.

Q. So that there is no way you know of now that the accuracy of this survey could be checked by a third party?

A. No, sir.

Mr. Mason: Your Honor, I renew Goodyear's objection to the admissibility of this document in evidence as to the truth of the matter asserted which I understand to be the offer of the attorney for the complaint.

1072 Mr. Kelaher: Your Honor, in that connection, I think the soundness of the survey has been amply demonstrated by examination of the witness. The entire quesitonnaire is available; this man has demonstrated he is a very competent analyst; and it seems to me there shouldn't be any question about his trustworthiness.

Mr. Mason: I think his testimony already indicates the fact that it is very dubious whether this data set down here actually reflected underlying work material and I think under those circumstances it would be highly prejudicial to Goodyear to admit this document into evidence.

Hearing Examiner Kolb: Well, as far as I am concerned, I don't see any reason why it shouldn't be admitted. This document has been prepared by Atlantic and the analyst has made his analyzation.

Of course now he brings some question about it which I think are too late now to sufficiently affect the document.

I will admit it so far as Atlantic is concerned, subject to motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 101-A through Z-20 for identification, was received in evidence.)

Mr. Mason: Could I have the Hearing Examiner's statement read, preceding his ruling?

(Statement read.)

1073 Mr. Mason: I take it the suggestion that these questions come too late doesn't apply to Goodyear?

Hearing Examiner Kolb: Well, I said subject to strike on the part of Goodyear. I am not impressed by the analyst questioning his own analyzation at this time in this proceeding.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. The questionnaire will be received in evidence as Commission's exhibit 101-Z-21 through 27.

Mr. Kelaher: I think the record should note that this document was previously identified as Respondent's exhibit A-5.

Hearing Examiner Kolb: All right.

(The document referred to, heretofore marked Respondent's Exhibit A-5 for identification, was re-marked COMMISSION'S EXHIBIT 101-Z-21 through 27, and received in evidence.)

Hearing Examiner Kolb: Anything further?

Mr. Kelaher: We have nothing further today, your Honor.

Hearing Examiner Kolb: We will adjourn until 9 tomorrow morning.

1075 Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: I will call Mr. Drennan.

ROBERT B. DRENNAN was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your full name and business address?

A. Robert B. Drennan, Harris & Leonard, 1301 West 9th Street.

Q. How long have you been employed by Harris & Leonard?

A. Approximately four years.

Q. In what capacity?

A. As a salesman.

Q. Were you a salesman for the full four years?

A. That's right.

Q. Will you tell us what your sales territory is?

A. Oh, it consists of Media territory, MacDade Boulevard, and over in West Chester Pike and Upper Darby.

Q. Is any part of your territory in the State of Delaware?

A. No, sir.

Q. What type accounts do you solicit?

A. Mostly gas stations and new car dealers, a few commercial.

1076 Q. How often do you call on those accounts?

A. Twice a week.

Q. Are there any Atlantic service stations in your sales territory?

A. Yes, sir.

Q. Can you tell us how many?

A. There are quite a few. I call on 20 of them.

Q. Are there more than 20?

A. I would say so.

Q. Have you ever called on those others?

A. Yes, sir.

Q. When and how often?

A. Well, when I first took the territory over and when there is a new man goes in I call on him, and I can't do any business with him in recapping, then I don't bother any more.

Q. These 20 that you call on, do you solicit their business for new tires, recapping and batteries?

A. Yes, sir.

Q. What type business do you do with them?

A. Well, I do all 75 percent of their recapping, and a few of them on new tires.

Q. 75 percent. Will you explain that, please?

A. I would say 75 percent of their recapping. In other words, they are sending some of it out to somebody else; I am not getting all of it.

1077 Q. I see. Now can you name some of those accounts that you sell to?

A. Yes, sir. Joe Castagna; Hap Little's; Clover Leaf Service; Lloyd Ammon; Jimmy Matthews; Don McLaren; Vern Carron; Floyd Mohny; Edward Sprague; F. J. Bal-

loran; Ed Zola; Bill McKee; Parks & Dawn; Russell's Atlantic; Ted Riter's Atlantic; Earl Shank's Atlantic; Young's Atlantic Service; Terence Atlantic; Tim Cappeli; and Bill Way.

Q. Mr. Drennan, now you have listed the Atlantic stations to which you sell, is that correct?

A. That is right, sir.

Q. And will you tell us the type business you do with each of them? Do they all buy about the same thing?

A. Yes, sir.

Q. Will you please tell us what they buy?

A. Well, they buy all their recapping from me, as I said, about 75 per cent of it, and a few of them buy new tires. Now and then.

Q. Sir?

A. Now and then, an occasional tube.

Q. Can you point out those that buy a new tire or tube occasionally?

A. Yes, sir. Vern Carron, in Springfield has bought tires from me. And Russell Smedley, on Marshall Road, in Drexel Hill, Russell's, has bought tires.

1078 Q. Are there any others?

A. Clover Leaf, he has bought tires from me. And Hap Little, he has bought tires from me. Balloran bought tires from me. Earl Shank; Young's Atlantic; and Terence's Atlantic.

Q. Is that all?

A. Yes, sir.

Q. Now those that buy the tires from you, did they buy on a stocking basis?

A. No, sir.

Q. How about batteries, do they buy batteries from you?

A. No, sir.

Q. Did any of these stations buy your batteries?

A. Well, I would say Clover Leaf now and then might have bought a battery from me.

Q. Any other stations?

A. No, sir.

Q. Did you offer them batteries, or offer to sell batteries to each of these stations?

A. Yes, sir.

Q. How often do you call on them?

A. Twice a week.

Q. Do these stations carry tires, batteries and accessories, all of them?

A. Yes, sir.

Q. Do you recall the type or brand that is advertised on or about the stations?

A. Yes, sir. Goodyear.

Q. Are there any exceptions, any in there that do not carry Goodyear?

A. Yes, sir, there is. Hap Little carries Firestone. Clover Leaf, he carries U. S. and Goodyear. And Earl Shank, he carries anything. Parks and Dawn, it is Lee. Young's Atlantic, it is Lee. And Terence's, why, he carries anything, Goodyear or U. S. He don't stock too many.

Q. Take Clover Leaf. Is that an Atlantic station?

A. Yes, sir.

Q. Does that operator own his own property?

A. No, he is an independent. He leases the property from somebody else.

Q. How about this Little's?

A. He owns his own property.

Q. How about Parks and Dawn?

A. He owns his own property.

Q. Earl Shank's?

A. He owns his own property.

Q. And Young's Atlantic?

A. Well, he is renting from somebody else.

Q. Other than Atlantic, you mean?

A. Yes, sir.

Q. How about Terence?

1080 A. He is renting from somebody else other than Atlantic.

Q. Now you stated that you have tried to sell them all new tires from time to time?

A. Yes, sir.

Q. Has any operator given you any reason why he wouldn't buy your tires?

A. Well, yes.

Q. Who, which operator?

A. Well, Floyd Mohny, Ed Sprague.

Q. Is that all?

A. Yes, sir.

Q. What did Floyd Mohny tell you, and when?

A. Well, he told me, he said, "After all," he said, "You can't bite the hand that feeds you."

By Mr. Dias:

Q. What else did he say?

A. Well, being as he is leasing from Atlantic, why, he thought he should handle their product.

Q. When was it he told you that?

A. About a year ago.

Q. What did Ed Sprague tell you? And when?

1081 A. Well, as a matter of fact, he told me about two weeks ago. He said, "After all, I am leasing from Atlantic, it would look bad if I bought a set of U. S. Royals off you and put it on the credit card for 30, 60 and 90 days."

Q. Are there any others that made statements to you?

A. Well, Smedley, I talked to Russell Smedley, I talked to him on tubes, and he stated that it wouldn't look right

if I had U. S. Royal tubes sitting on the rack where I should be having Goodyear 'cause that is what he handled.

Q. When did he tell you that?

A. About a year ago.

Q. You mentioned that you also sold to Balloran?

A. Yes, sir.

Q. Hasn't Balloran left the station—what was the address of that station?

A. West Chester Pike and Newtown Road, Newtown Square.

Q. When did you start selling him?

A. When I first went with Harris & Leonard, approximately 4 years ago.

Q. What did you sell to him at that time?

A. I occasionally sold him a U. S. tire; he would call for it and I would run it out. And I did all his recapping.

Q. And did you continue to sell him all the time he was in the station?

A. Up until a few months ago, yes, sir.

1082 Q. When was that, approximately?

A. I would say maybe February, March. Back in that time.

Q. Did he leave his station at that time?

A. No, sir, he left the station about a month and a half or 2 months ago.

Q. Did he give you any reason why he discontinued purchasing from you?

A. Well, he said he wasn't carrying enough of his own stock on hand, and that he had to stock up on his own.

Q. Is that all he told you?

A. Yes, sir.

Q. Do you know who the Goodyear distributor is in your district, your territory?

A. Well, there is two of them. Ed Parris is one of them, and Miller, I think it is Ernie Miller.

Q. Do you know whether either of those gentlemen have recapping facilities?

A. No, sir, they don't. I know Ed Parris doesn't. I wouldn't say on Ernie Miller.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examine.

Cross-Examination by Mr. Ballard.

Q. Mr. Drennan, this list that you have furnished us was made up from your records?

1083 A. Yes, sir.

Q. And this constitutes all the Atlantic stations who were your regular customers?

A. Yes, sir.

Q. Harris and Leonard's specialty is recapping, isn't it?

A. That is right, 99 percent of our business is recapping.

Q. And your biggest competitors are C. A. Powers—

A. In that territory, yes.

Q. The Lanza people don't get down that way very much, do they?

A. Who?

Q. Are you familiar with that company?

A. I never heard of them.

Q. C. A. Powers are the biggest competitor of yours then?

A. Yes.

Q. Between you, you do most of the recapping business in your territory?

A. Yes, sir.

Q. Now are you pretty familiar with Mr. Parris?

A. I don't know him personally, but I meet him occasionally.

Q. I think he offers recapping, doesn't he?

A. Yes, sir.

Q. I suppose he arranges to have that done by what? Would it be Goodyear stores?

A. Goodyear in Philadelphia.

1084 Q. They have a plant here in Philadelphia?

A. That is right.

Q. I suppose he advertises that as factory recapping?

A. Yes, sir.

Q. And he offers that to the same Atlantic dealers that you do?

A. Yes.

Q. And do they deal with you?

A. Yes, I can give them quicker service. In other words, if they call me up at 8 o'clock in the morning, I can go out and pick the tires up and have them back the same day.

Q. Miller offers the same deal to his dealers, does he?

A. I imagine so.

Q. And I forget, what kind of batteries do you handle?

A. U. S.

Q. U. S. batteries?

A. That's right. It has our own U. S. name on it, made by National Carbide.

Q. What is your price on those batteries? What quantities do you offer them at?

A. Not any quantities. I sell them at distributor billing.

Q. Do you ever make a concession below that price?

A. No, sir.

Q. Ever put on a special deal of them?

A. No, sir, distributor billing is all.

1085 Q. You don't have this baker's dozen deal?

A. No, sir.

Q. Did you ever hear of that?

A. Yes, sir.

Q. I think—is it Miller or Parris that offers that?

A. I don't know.

Q. One free for every 15 or something like that?

A. Yes, something like that.

Q. You don't offer that?

A. No, sir.

Q. This fellow, Bill Way, he is one of your customers, isn't he?

A. Yes, sir.

Q. Do you know him pretty well?

A. Well, as a customer.

Q. He used to be an Atlantic salesman, I think?

A. Yes, sir, he did.

Q. I think he had about the same territory where his station is, didn't he?

A. Yes, sir.

Mr. Ballard: No further questions.

Mr. Mason: No questions.

Redirect Examination by Mr. Dias.

Q. Mr. Drennan, on that battery purchases; do you
1086 have any customers that purchase batteries on a
stocking basis, whether Atlantic or anything else?

A. No, sir.

Mr. Dias: That is all.

Hearing Examiner Kolb: That is all, Mr. Drennen.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

1087 Hearing Examiner Kolb: The hearing will come
to order.

Mr. Kelaheer: I would like to call Mr. Lingenfelser to
the stand, please.